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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. ~~612~~ 19

ALEXANDER SPRUNT & SON, INC.; ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

FILED DECEMBER 31, 1928

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VOL. I

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[fol. a-1] Stipulation for Transcript Filed Dec. 17, 1928

IN UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

In Equity. No. 310. Consolidated

ALEXANDER SPRUNT & SON, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

STIPULATION RE TRANSCRIPT OF RECORD—Filed Dec. 17, 1928

It is hereby stipulated by the parties, including the intervenors, acting by their respective counsel, for the purpose of indicating the portions of the record to be included in the transcript of record that the following and no other papers shall be included:

(1) Bill of Complaint.

(2) Order of Court calling to his Assistance a Circuit Judge and a District Judge to hear and determine this case.

(3) Rule to show cause.

(4) Application of Arkansas Cotton Trade Association and Texas-Oklahoma Compress Association for permission to intervene.

(5) Application of Oklahoma State Cotton Exchange for permission to intervene.

(6) Order granting permission to Arkansas Cotton Trade Association, Texas-Oklahoma Compress Association and Oklahoma State Cotton Exchange to Intervene.

(7) Intervention and Answer of Arkansas Cotton Trade Association, Texas-Oklahoma Compress Association and Oklahoma State Cotton Exchange.

(8) Intervention of Interstate Commerce Commission.

(9) Answer of Interstate Commerce Commission.

(10) Answer of United States of America.

(11) Intervention of Galveston Cotton Exchange and Galveston Chamber of Commerce.

(12) Intervention of Manchester Terminal Corporation.

(13) Order Consolidating Causes.

(14) Petition of New Orleans Joint Traffic Bureau to Intervene.

(15) Petition of Houston Cotton Exchange to Intervene.

(16) Statement of the proceeds at New Orleans, Louisiana, July 12th and 13th, 1927, before the Court and Exhibits referred to therein.

(17) Narrative of the Proceedings before the Interstate Commerce Commission in Docket 13991—Weatherford-Crump & Co., Complainants vs. Abilene & Southern R. R. Company, et al, Defendants and in Docket 14940—Application of Rates on Cotton to Gulf Ports and Exhibits one to nine inclusive and A-1 to A-218 inclusive, to be sent to the Supreme Court in their original form.

(18) Order granting preliminary injunction.

(19) Opinion of Court December 2, 1927.

(20) Final Order of Court dissolving temporary injunction and dismissing the bills.

[fol. 2] (21) Notice of Appeal.

(22) Assignments of Error.

(23) Citation on Appeal.

(24) Bond.

(25) Affidavits of J. H. Tallichet and W. L. Cook Counsel for plaintiffs in Equity No. 311, electing not to appeal.

(26) All orders for extension of time for filing record.

(27) Stipulation of parties concerning correctness of narrative of testimony and concerning exhibits.

(28) Order of Court approving statement of evidence and ordering original exhibits forwarded to Supreme Court.

(29) This stipulation.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States.

R. C. Fulbright, Counsel for Appellants. Elmer B. Collins, Special Ass't to the Atty. General, for the United States of America. J. Stanley Payne, Solicitor for Interstate Commerce Commission. A. L. Reed, Counsel for Arkansas Cotton Trade Ass'n et al.; C. B. Cochran, Counsel for Oklahoma State Cotton Exchange, Counsel for Intervenors, Appellees.

[File endorsement omitted.]

[fol. 3] [Caption omitted]

[fol. 4] [File endorsement omitted]

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed July 1, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Alexander, Sprunt & Son, Inc., a North Carolina corporation doing business and with its office and place of business in Houston, Harris County, Texas; Anderson, Clayton & Co., a joint stock association organized under the laws of the State of Texas with its principal office and place of business in Houston, Harris County, Texas; Houston Compress Company, a Texas corporation with its principal office and place of business in Harris County, Texas; Ship Channel Compress Company, Inc., a Texas corporation with its principal office and place of business in Harris County, [fol. 5-a] Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of Texas with its principal office and place of business at Dallas, Dallas County, Texas, and with an office in Harris County, Texas; Turning Basin Compress Company, a Texas corporation with its principal office and place of business in Houston, Harris County, Texas and Weatherford, Crump & Co., a Texas corporation, with its principal office and place of business in Houston, Harris County, Texas, respectfully bring this, their Bill of Complaint, against the United States of America on behalf of themselves and on behalf of such other persons, firms and corporations as have an interest herein and may, by proper proceedings, become parties hereto, and do hereby sue to enjoin, set aside, suspend and annul an order, hereinafter described, of the Interstate Commerce Commission, a Commission existing by virtue of an Act of Congress of February 4, 1887, entitled: "An Act to Regulate Commerce," and the acts amendatory thereof and supplementary thereto.

I

Plaintiffs hereinafter sometimes called petitioners, are engaged, among other things, in making and receiving shipments of cotton in bales in interstate and foreign commerce over and upon the lines of the various railroads operating as common carriers for hire and serving the States of Texas, Oklahoma, Arkansas and Louisiana, from points upon said railroads in said states to or through Houston, Galveston and Texas City, Texas, and other points in the State of Texas upon the Gulf of Mexico, and New Orleans, Louisiana, and other Gulf Ports, and also in the shipment [fol. 6] of cotton in intrastate commerce between points within the State of Texas and upon the lines of the railroads engaged in transporting such shipments of cotton as common carriers for hire between points in said State.

II

That the railroads upon which such shipments of cotton are made also transport shipments of cotton for other persons, firms and corporations engaged in the business of buying, selling and shipping cotton in interstate and foreign commerce and in intrastate commerce within the territory hereinabove described and in making shipments to and through the same ports as are used by your petitioners herein and such other firms, persons and corporations are engaged in competition with plaintiffs herein in purchasing or assembling shipments, selling, marketing and delivering cotton and utilizing the other means of transportation in connection with such business, and your petitioners are interested in and desirous of obtaining or procuring the shipment and movement of cotton in such commerce at the lowest reasonable rates of freight which may be lawful and consistent with the services performed.

III

That the railroads engaged as common carriers for hire in the transportation of the cotton traffic hereinabove referred to, operate in said states and between points in said [fol. 6-a] states and in adjoining states, such as Tennessee and Mississippi, in transporting such cotton from the cotton producing territory in Texas, Oklahoma, Arkansas and

Louisiana, west of the Mississippi River, to the various Gulf Ports above mentioned, being the Cities of Houston, Texas City and Galveston, Texas, and New Orleans, Louisiana, and other cities upon the Gulf of Mexico, and said common carriers operate subject to the Interstate Commerce Act, as aforesaid, in such interstate and foreign commerce, and where made respondents in the proceeding before the Interstate Commerce Commission hereinafter more specifically described, and where commanded to do and perform the things complained of hereinafter, under and by virtue of the order or orders hereinafter described and a list of such common carriers who were named and made as respondents or parties to said proceedings before the Interstate Commerce Commission is hereto appended and marked Exhibit "A" and made a part hereof. In some cases the railroads are at the present time being operated by corporations successors to parties named in such Exhibit, but the said successors are subject to the jurisdiction and orders of said Commission.

IV

Petitioner, Texas Farm Bureau Cotton Association, is particularly engaged in assembling, shipping, selling, marketing and delivering cotton for its members who are producers of cotton located at various points throughout the State of Texas, and make such shipments through various ports, but such cotton is for the most part shipped to and assembled at warehouses in the City of Houston, Texas, where the shipments find their destination and are [fol. 7] placed in stock, and after being so assembled portions thereof are later shipped out to various destinations and through various channels. Petitioners, Alexander, Sprunt & Sons, Inc., Anderson, Clayton & Company, and Weatherford, Crump & Company, are cotton merchants engaged in buying, selling and shipping cotton in the commerce aforesaid, and through the various ports and likewise maintain at City of Houston and elsewhere stocks of cotton which are shipped from points in Texas, Oklahoma, Arkansas and Louisiana, west of the Mississippi River, to Houston, Texas, over the lines of said railroads and delivered to such petitioners at Houston, Texas, which said destination is within the southern district of Texas and within the jurisdiction

of this court, and petitioners, Houston Compress Company, Ship Channel Compress Company and Turning Basin Compress Company, are in the business of receiving shipments of cotton at warehouses owned by such companies in the City of Houston, Texas, and in making shipments for their customers from the said City of Houston and in providing warehouse and merchandising facilities for shipments of cotton made by petitioners and in delivering shipments of cotton for the owners thereof to wharves and docks which are located in the Port of Houston and in delivering the same to said companies in behalf of plaintiffs and in behalf of other persons, firms and corporations.

V

The defendant, United States of America, is being sued by the express authority of the Congress as set forth in the Act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," 38 Statutes at Large, 219.

VI

[fol. 7-a] This suit is brought to enjoin, set aside, suspend and annul an order of the Interstate Commerce Commission. It arises under the Constitution and laws of the United States, particularly under the commerce clause of the Constitution and the Fifth Amendment thereof, and under the Interstate Commerce Act and is instituted under the provision of the Interstate Commerce Act and the Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," and also under the general equity jurisdiction of this court.

VII

The orders of the Interstate Commerce Commission, brought in question in this suit were made pursuant to certain proceedings and hearings, being, first, a formal complaint filed with the said Commission by Weatherford, Crump & Company as complainant against Abilene & South-

ern Railway Company and various other Railroad Companies including the principal railroad companies named herein and being docketed as docket 13991 on the Docket of the Interstate Commerce Commission and, second, an investigation instituted by the Interstate Commerce Commission, entitled: "Application of Rates on Cotton to Gulf Ports," shown on its docket as 14940, and further a reopening as to certain features of a former proceeding before the Interstate Commerce Commission which had been brought by the Galveston Commercial Association and Houston Cotton Exchange and others, as complainants, against the Alabama & Vicksburg Railway Company and [fol. 8] various other railroad companies, including the railroads named in this cause, as defendants and docketed as No. 11965 on the Docket of the Interstate Commerce Commission will be herein referred to as "THE COMMISSION," the first proceeding above mentioned as 13991, the second as 14940 or the Shipside Case and the third, as 11965. The character of the proceedings is as follows:

13991 involved allegations as to unlawful discrimination and prejudice as to rates on cotton moving from interior points in Texas and other states to Galveston for export with stoppage in transit under transit privileges at Houston upon which export shipments higher rates were assessed than were being concurrently assessed by the carriers for shipments moving into Galveston under domestic bills of lading as a result of which it was alleged that the making of such higher charges against the complainant making the export shipments was discriminatory and that by reason thereof the plaintiffs suffered damage. The nature of this proceeding was succinctly stated in the first decision of the Interstate Commerce Commission rendered in 13991 and 14940 under date of June 23, 1925, and reported at 100 I. C. C. Reports page 159. The following language is shown at page 162 of the published report:

"That complaint was presented by a warehouse company at Houston, which merchandised or compressed cotton at that point and then reshipped it under transit provisions to Galveston for export. Such cotton moved under through export bills of lading from Houston and the higher export rates were assessed. As before pointed out, cotton consigned to the compresses located on the piers at Galves-

ton would move in under domestic bills of lading and the lower domestic rate would be assessed. Complainant in No. [fol. 8-a] 13991 contended that the services rendered by the carriers on shipments of cotton merchandised or compressed at its facilities in Houston, and then forwarded on export bills of lading through Galveston, was substantially similar to that afforded in connection with shipments consigned to the wharf compresses at Galveston, and that the charging of the higher export rates on its shipments constituted undue prejudice with resultant damage for which reparation is sought. Unreasonableness was also alleged, but that allegation was withdrawn at the hearing."

A hearing was held in 13991 but before any decision was rendered therein the Commission instituted the investigation known as 14940. Request for the investigation and the character of the same is aptly and correctly described in the same decision above referred to and in the following language shown at pages 162 and 163 of the published report of the Commission:

"Following the hearing in No. 13991, we received communications from cotton interests at Galveston and interior Texas points stating that large warehouses had been constructed on the water front at Houston, and that the collection of the lower domesic rates on cotton going to those warehouses unduly preferred them to the prejudice of the uptown and interior warehouses. The question of the legality of applying the lower domestic rates on cotton going to the water-front facilities was also raised and we were asked to institute a general investigation into the whole situation. Accordingly, on June 30, 1923, the order in No. 14940 was issued, instituting a general investigation concerning the lawfulness and propriety of the practices of carriers in connection with the application of interstate domestic rates and export rates on cotton from points in Oklahoma, Arkansas, Texas, and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, [fol. 9] Houston, Texas City, Beaumont, and Port Arthur, Tex., New Orleans, La., and Mobile, Ala., including subports of any of said ports, with a view to determining:

" '(1) Whether the practices now alleged to be followed by certain carriers and shippers in applying domestic rates,

which are lower than the corresponding export rates, on cotton delivered to water-front warehouses and subsequently exported are authorized by existing tariffs, or whether such practices, or any of them, constitute illegal practices; and

"'(2) Whether any change should be made in existing tariff regulations or rates in order to avoid and remove such undue preference, if any, that results or may result in favor of said water-front shippers or localities, and such undue prejudice, if any, that results or may result against said uptown shippers or localities, or any other undue prejudice against or undue preference of any other shippers or localities that may be found to exist.'

"No. 13991 was reopened and consolidated with the general investigation. Similar investigations were instituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the application of the intrastate rates in those States, and the hearings were held jointly with those commissions."

Hearings were held upon the foregoing questions in October, 1923, after which the Commission rendered its decision and order under date of June 23, 1925, a copy of which is hereto attached (omitting list of appearances and list of parties) and marked Exhibit "B" and made a part hereof.

After this decision and order petition was filed by Weatherford, Crump & Company for a re-opening and further hearings with respect to the question of awarding [fol. 9-a] reparation for damages claimed by Weatherford, Crump & Company, which petition was denied by the Commission by an order dated October 5, 1925. The question of reparation for damages has not been further raised in the proceeding and is not brought in issue in this suit.

The order of June 23, 1925, was originally issued to become effective October 12, 1925, but by various subsequent orders the Commission postponed the effective date thereof to February 12, 1926, and later postponed the same indefinitely as will be hereafter shown.

Under date of August 12, 1925, the carriers who were defendants or respondents in the above proceeding filed a petition with the Commission setting up that they could not carry out the order of the Commission of June 23, 1925,

without violating the order which had theretofore been issued by the Commission on February 2, 1923, in Docket 11965, for the reason that said order of June 23, 1925, commanded the carriers to establish one rate to apply on both local, domestic and export shipments of cotton moving from points in Oklahoma, Arkansas, Texas and Louisiana (on and west of the Mississippi River) to Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas; whereas, in docket 11965 the Commission had ordered certain relationships of rates on cotton to be established by the carriers from points in Arkansas and Louisiana to New Orleans on the one hand and to Houston, Galveston and Texas City on the other hand and that in order to carry out the later orders of the Commission it would be necessary to modify the orders and authority in 11965 and therefore request was made that 11965 be reopened for the purpose of determining whether or not the order therein should be modified so as to permit of a readjustment of rates to comply with the order and findings in dockets Nos. [fol. 10] 13991 and 14940. Following this petition the Commission under date of December 28, 1925, issued its order of reopening 11965 only as to the question of modification of the order insofar as might be necessary to comply with the findings and order in 14940 and 13991 as is set forth by copy of such order heretofore attached and marked Exhibit "C" and made a part hereof.

The Commission's decision in 11965 is reported in 77 I. C. C. Reports pages 388 to 414, inclusive. In said proceeding there was brought in issue the question of the reasonableness of the rates on cotton from points of origin in Oklahoma, Arkansas and Louisiana to Houston, Galveston and Texas City for local delivery and for shipside delivery, both domestic and export, and also the relationship of rates with rates on similar traffic from the same points of origin to New Orleans, Louisiana and Mobile, Alabama. Rates from Tennessee and Mississippi were also brought in issue, but they are not germane to this proceeding. In that case the Commission found that the export rates applying to shipside from points in Oklahoma to Houston, Galveston and Texas City were reasonable rates and that the local rates applying to such points were and would be unreasonable to the extent that they exceeded rates which were five cents less than said export rates, as a result of

which carriers established local rates five cents under the export shipside rates, which export shipside rates included additional services incident to export traffic and not required for local traffic, among which were additional free time privileges, delivery of shipments upon wharves within reach of ship's tackle and the payment of wharfage upon such shipments. The Commission found that the rates from points in Arkansas to Galveston, Houston and Texas City were unreasonable to the extent that they exceeded a certain differential relationship therein prescribed with [fol. 10-a] the existing rates applicable from such Arkansas points to New Orleans. The Commission also found that rates from the central portion of the State of Louisiana to Galveston and Houston should be no higher than the rates to New Orleans, and that certain differentials should be made from western Louisiana in favor of Galveston and Houston and certain differentials in favor of New Orleans as to eastern Louisiana, except the territory immediately adjacent to New Orleans, and thereafter the Commission prescribed in greater detail the Louisiana adjustment in a proceeding growing out of Docket 11965 and known as I. & S. Docket 1858, decided November 23, 1923, and reported at 85 I. C. C. Reports, page 5. As a result of the foregoing proceedings, 11965 and its allied cases, the carriers established rates which were according to the decisions and order of the Commission reasonable rates applicable to Houston, Galveston and Texas City from points in Oklahoma, Arkansas and Louisiana. The investigation in 11965 dealt particularly with the reasonableness of the rates and also with the relationship of the rates as between New Orleans on the one hand and the Texas ports named on the other hand, and it further dealt with the reasonableness of the local rates to the Texas destinations as well as with the export shipside rates including wharfage. The rates established pursuant to that order were in effect at the time of the hearings and particularly the last hearings in 13991 and 14940 and under the decision and order of the Commission in 11965, the publication of any higher rates to Houston, Galveston and Texas City for local delivery than the rates fixed by such order would be unreasonable and unlawful in violation of section 1 of the Interstate Commerce Act. In reopening 11965 the Commission did not in terms specify that the reasonableness of the rates was re-

opened and later ruled that the question of the reasonable-
[fol. 11] ness was not reopened, but only as to the questions of discrimination and preference or relationship of the rates.

Prior to the issuance of the order reopening 11965 the Houston Cotton Exchange and Board of Trade and the Chamber of Commerce of Houston, Texas, voluntary commercial organizations of which certain of these plaintiffs are members, filed a petition for reopening and further hearing of the consolidated cases in 13991 and 14940 setting forth that in its prior consideration the Commission had not made investigation of the relative advantages and disadvantages, preferences and discriminations as between shippers located at the ports such as plaintiffs in this cause and shippers located in the interior or as to the transit privileges, rules and regulations, including allowances given by defendant railroads at interior points and prayed that the investigation be broadened so as to include all such transit privileges, allowances, rules, regulations and practices applied by the defendant railroads at the interior points as well as to the ports and this petition was granted by the Commission through the issuance of its order dated December 28, 1925, hereto attached and marked Exhibit "D" and made a part hereof, by which it is noted that the effective date of the prior order in 13991 and 14940 was indefinitely postponed. It is noted that this order was of the same date as the order in 11965 and that the latter order (Exhibit "C") ordered that 11965 be heard in connection with 14940 and 13991. Later joint hearings were ordered and held in the months of April, May, and June, 1926, at Houston and Dallas, Texas, and New Orleans, Louisiana, and following these hearings the Commission issued its further decision and order hereinafter described and complained of.

[fol. 11-a] From the foregoing orders of investigation and the issues as raised in 13991, it will be seen that the Commission has held hearings upon the issue as to whether or not the practices being followed by the defendant carriers and shippers in applying domestic rates on cotton moving from the interior to Houston, Galveston and other points, which are lower than the corresponding export rates on cotton delivered to shipside at the ports for export, constitute

illegal practices and result in unjust discrimination or undue prejudice on the one hand or undue preference on the other as between shippers using facilities at or near the water front at such ports and shippers located elsewhere and as between localities involved in such investigation and that in addition thereto in the later hearing under the order of investigation dated December 28, 1925, there was set for investigation a determination of what services are accorded and what charges, payments or allowances are made by carriers in connection with the handling of cotton at interior points, including payments for compression, and whether such services, charges, payments or allowances result in unjust discrimination or undue prejudice or preference and what changes should be made in such services, charges, payments or allowances. In interpreting the orders and defining the issues in such investigations the Commission adjudged that the reasonableness of the rates on cotton was not in issue and in its decision and order hereinafter described and complained of, the Commission affirmatively finds that the reasonableness of the rates was not in issue, but the question of the relation of rates, the discriminatory or preferential character of rates, rules, regulations and practices was in issue in the investigation.

[fol. 12] VIII

That after its order of December 26, 1925, broadening the investigation and reopening the proceedings as above set forth and after the further hearings hereinabove referred to the Commission issued its report, decision and order, under date of April 4, 1927, reaffirming its prior order of June 23, 1925, but modifying it to the extent necessary to comply with its order in connection with said decision of April 4, 1927, all of which report, decision and order (omitting appearances and list of parties) are set forth in Exhibit "E" hereto attached and made a part hereof; said order was made to become effective June 16, 1927, and by later order on June 2, 1927, was postponed to become effective July 16, 1927. The said exhibits "B" and "E" together constitute the order complained of in this case.

That the parties hereto while not admitting the reasonableness, correctness or legality of the Commission's findings and orders of June 23, 1925, and April 4, 1927, do not

challenge that portion of the findings and orders which relate to the rules, regulations and practices being followed by the defendant carriers at interior points including the various other services set forth and dealt with in that portion of the said decision of April 4, 1927, under the headings of "Concentration and Compression at Interior Points" but in this suit challenge only the findings and order of the Commission insofar as the same deals with the aggregate through rates and the rules, regulations and practices at the ports. Where the order of the Commission is mentioned in this bill it shall be taken to mean the orders set forth in Exhibits "B" and "E," which orders incorporate, as a part thereof, the decisions set forth in said Exhibits.

[fol. 12-a] X

The records and the decisions of the Commission in this case disclose the general character of the traffic and the general nature of transportation services involved in the proceeding. The investigation embraced cotton traffic originating in Texas, Oklahoma, Arkansas and in that part of Louisiana west of the Mississippi river and moving to various Gulf Ports, among which the most important cotton ports are Houston and Galveston, Texas, and New Orleans, La. Cotton moves beyond the Ports by water to various foreign countries and to some extent by water to Atlantic Seaboard Ports where it is again moved by rail to various cotton mills. Cotton also moves from such ports via all rail movement to various destinations in the United States or to other Ports. Cotton also moves from the various points of origin in the interior via all rail movement to various destinations in the United States. Cotton is first prepared for transportation at the point of production by being put up in rectangular bales at country cotton gins with a density of approximately 11 pounds per cubic foot and an average weight of about 520 pounds, although the bales are commonly referred to as being 500 pounds. Such bales are spoken of as uncompressed cotton or flat cotton. These uncompressed cotton bales may be placed in hydraulic presses and compressed to a density of 22½ pounds per cubic foot and these are called standard density bales or compressed cotton. Frequently, uncompressed bales or

standard compressed bales are further compressed to a density of approximately 33 pounds per cubic foot and these are called high-density bales or compressed cotton. A small amount of cotton is put up in round bales at the gin with a density of approximately 33 pounds per cubic foot at the point of origin—such round bales move and are commonly classed as "compressed cotton."

[fol. 13] Cotton mills generally purchase cotton in lots of 100 bales or multiples thereof although there are some purchases of 50-bale lots. These lots usually must be made of cotton of one particular grade, staple or type. There are numerous grades, staples and types of cotton and in order to obtain 100-bale lots of particular grades, it is necessary for the cotton merchants or shippers to assemble numerous bales of cotton at a particular point where they will classify and grade the cotton and obtain therefrom even-running lots of particular grades. This is a process of merchandising by which the bales of cotton move into a common stock and are prepared for movement to mills or to other purchasers and the process of assembling the same and of selecting such even-running lots therefrom is commonly designated as "concentration" and the merchants performing this service are called concentrators and are so referred to in the record in these proceedings and in the decisions of the Commission.

Cotton moves by railroad on what are known as "any quantity" rates, that is, to say, the rate applies in cents per 100 pounds irrespective of quantities shipped and there are no car-load rates generally speaking. Rates are referred to in cents per 100 pounds unless otherwise specified. The uncompressed bales originate at various interior railroad stations and are shipped in that form except that where they originate at points where compresses are located they are usually compressed before being shipped by railroad. Compresses are located at various interior points, most of them being standard-density compresses. Because of the bulky nature of uncompressed cotton, the practice grew up on the part of the railroads to absorb the cost of compression to standard density at various interior compress points in order to conserve car space for shipping [fol. 13-a] the commodity, but where the cotton moves only short distances the railroads will not absorb all of the compression charge and in no case do they absorb any part un-

less the freight rate is in excess of 56 cents per 100 pounds.

At all compresses there are warehouse facilities which are available to the cotton merchants for the concentration and grading of cotton for reshipment. As the greater part of the cotton originates at country railroad stations which are non-compress points it is moved by the railroads into the compress points, stopped for compression and reshipped to the ports. Upon the theory that the cotton was being stopped at the compress any way, the railroads made no charge for according the shipper a transit privilege at the compress point and the merchant may concentrate his cotton and reship it to the port on the balance of the through rate without any extra charge by the carrier. This practice spread until the tariffs generally provide that all cotton may have one free transit privilege from the carriers for concentration whether the same be at the compress point or not. If, however, a second privilege is taken a charge of 3½ cents per 100 pounds is made. This is called the "second concentration charge."

There are numerous cotton warehouses and compresses also located at the various ports at which warehouses, similar merchandising or concentration service is performed for the owner or cotton merchant so that cotton originating at an interior point may be concentrated by the merchant at an interior warehouse, either at a point where the cotton is compressed in transit by the railroad or at another point in the line of movement or the cotton may be moved to the port and concentrated in a warehouse at the port where similar services are performed. In the first case, the merchants are called "interior concentrators" [fol. 14] and in the second case, they are called "port concentrators." Frequently, cotton which has been first concentrated in the interior will, for various reasons, be again concentrated at the port and this is called "second concentration" as above referred to.

Cotton moves to ports in two classes of traffic, one for local delivery at depots or warehouses where the owner takes delivery and merchandises or concentrates his cotton at such point as the destination, and the other for export movement. Cotton moving for export may move under so-called through export bills of lading under forms and conditions prescribed by the Interstate Commerce Commission

in its decision in I. C. C. Docket 4844 reported at 64 I. C. C. Reports, pages 347 ff, or it may move upon what is known as "for export" bill of lading, which bill of lading would apply on cotton which has already been concentrated and merchandised and is ready for export movement and is so intended, but upon which no bills of lading have been obtained beyond the port. The local rates to the ports are commonly referred to as "domestic rates" and the bills of lading covering same are domestic bills of lading; whereas, in other cases, export bills of lading are used, all such bills of lading being in form and with conditions and privileges as prescribed in the orders and decisions of the Commission in its Docket No. 4844, 64 I. C. C. 347, and also 52 I. C. C. 671.

Cotton moving to the port on domestic bills of lading is charged what is known as the domestic or local rate and certain services are required of the carriers in delivering such cotton and the shippers required to unload the same at once upon its arrival and release the cars in which it is loaded within 48 hours or incur heavy demurrage penalties. Cotton moving on export bills of lading imposes upon the carrier a duty to deliver such cotton in berths at ship's [fol. 14-a] tackle upon the various wharves and docks at the ports according as the shipper may determine and to pay the wharfage charges, as well as the cost of unloading such cotton and placing it at proper places in the steamer's berth, where it will be received by the steamer. It also involves additional transportation services of various kinds, among which there is accorded to the shipper the privilege of utilizing the cars for storage for a limited time and of liberal free time allowances together with demurrage rates which are substantially lower than those applying on local traffic and are not in the character of penalties where cotton is not unloaded within the time allowance. The undisputed testimony before the Commission shows that additional transportation services and transportation services of a different character are rendered to shipments of export cotton which are in addition to those rendered shipments of domestic or local-delivery cotton. The carriers have heretofore made a higher charge for export shipments of cotton than for local delivery of cotton. This charge is generally 5 cents per 100 pounds, which 5 cents embraces the

wharfage charge which is paid out by the railroad and amounts to 2 cents per 100 pounds at Galveston and Houston, Texas.

On shipments of cotton originating at points in Texas and moving to Houston and Galveston the difference between the local delivery rate and the export shipside rate (exclusive of wharfage) is 3½ cents per 100 pounds, but in the case of shipments moving from the other states involved in the investigation this difference is 3 cents per 100 pounds. For a number of years, interior concentrators have made shipments of cotton on the export rates and have enjoyed the additional services and privileges applicable under such rates and bills of lading covering such movements.

[fol. 15] Merchants using local warehouses at Houston, Galveston and other ports have paid the local depot delivery rates and have taken possession of such cotton and placed it in their stocks in such warehouses where they perform merchandising services upon the same similar to those performed at the interior concentration point by the interior concentrator. In the event the cotton is received in such warehouses at Houston, Galveston and other Ports is later to be exported from that point, the owner of the cotton will have the same transported to the wharves and docks and placed upon the berths in reach of ship's tackle where the steamship agent will receive the same and issue an ocean bill of lading therefor. This is the common and general practice of handling cotton at Houston, Galveston and New Orelans, which has previously moved from the originating territory involved in this investigation. Such movement is commonly and frequently made by dray or truck lines in which event the railroads have nothing to do with it as their transportation services were completed when the cotton was delivered at the local warehouse. In other cases the cotton is loaded upon railroad cars at such warehouses and switched to the wharves where it is unloaded and placed in the steamer's berth on the wharf and in this event the owner of the cotton pays the railroad its regular published rate for switching such cotton from the warehouse to the wharf and makes his own arrangements to have the same unloaded and placed in the steamer's berth at the wharf. This movement is independent of the previous rail-

road movement and the cost thereof is borne by the shipper using the warehouse in question.

The railroads publish tariffs which accord to shippers transit privileges on cotton at interior and port points. These transit privileges apply on cotton moving to shipside for export and are commonly used by interior concen- [fol. 15a] trators but port concentrators do not use the same for the reason that in order to use the transit privileges on the out-bound movement from the warehouse to the ship's berth the export shipside rate must be applied which is 3 cents (or 3½ cents) higher than the local delivery rate and the port concentrator is able to move his cotton from the port warehouse to the ship's berth and place in such berth at approximately this additional cost. It is more economical for him to handle it in this manner for the reason that he would have to take out another bill of lading with the railroad for the movement to shipside and would have to pay the additional charges to the railroad and later file what is known as a transit claim and obtain a refund of money; whereas, by standing the cost direct, he obviates the additional accounting and expense incident to the filing and handling of such transit claims.

Under the practice above described, it is shown that the user of each warehouse at the port pays whatever the cost might be to move the cotton from such warehouse to the steamer's berth and that such cost will vary according to the location or availability of the warehouse with respect to the steamer berths. At Galveston warehouses are located at varying distances from the waterfront and wharves ranging from 100 yards to a mile and a half according to the testimony in the case before the Commission and dray lines were and are commonly employed for the transportation of such cotton to steamer berths. At Houston prior to 1921 warehouses were located at varying distances back from the waterfront and utilized dray lines or barge lines for delivery of cotton in some cases and railroad switching services in other cases—the more distant warehouses usually employing switching services.

In 1921 to 1923 each of your petitioners, Alexander, Sprunt & Son, Inc., Anderson, Clayton & Co. and Weather- [fol. 16] ford, Crump & Co acquired through stock-ownership and caused to be constructed or acquired warehouses

for the merchandising of cotton which were located nearer to and more convenient wharf facilities than other warehouses at Houston and Galveston—such warehouses being owned respectively by petitioners, Ship Channel Compress Company, Houston Compress Company and Turning Basin Compress Company, corporations. The first two compress companies mentioned also maintain public wharves and docks at the port of Houston which are adjacent to or near the warehouses owned by such companies, and the third Compress Company has its plant located near to or adjacent to wharves and docks owned by the city of Houston, all of such wharves and docks being used as public facilities for the movement of cotton and various other commodities. When cotton is merchandised in such warehouses and is destined to move out through a steamship which has been assigned to a berth at the near-by wharves, it is necessary for the cotton to be moved out of the warehouse, which is entirely separate and distinct from the wharves and berths of steamers, and transported to a point or location in the berth which has been assigned to the steamer in question and at such point in that berth which may be designated by the agent of the steamer, who directs that the cotton be so stored on the berth as to serve his convenience in loading the ships. At Houston Compress Company—this service is performed by means of a system of electric trolley lines which transport the cotton out of the warehouse; thence to the wharf and thence to the particular berth upon the wharf; at the other compress points motor-drawn trucks or hand-trucks are utilized for movement from warehouses and to the wharves and similar service is performed in placing the same upon the particular berth in accordance with the directions of the agent of the steamer.

[fol. 16a] Your petitioners above named expended very large sums of money in order to obtain locations and to construct such facilities in such manner as would more conveniently serve the wharves and docks and so as to make more convenient and economical the handling of cotton out of warehouses to ship's berths.

Prior to the time when these facilities were completed complaint was made by merchants at Galveston owning or using warehouses located remote from the waterfront, to the effect that the users of such warehouses being con-

structed near the waterfront by obtaining the advantage of the local delivery rate which was lower than the shipside rate obtained an undue preference and advantage and that this discriminated against the users of uptown and interior warehouses, as a result of which the Commission set down for investigation the question as to whether or not the application of domestic or local delivery rates on shipments of cotton delivered to warehouses near the waterfront which were lower than corresponding export rates constituted illegal practices or involved undue preference or undue prejudice and all of which is set forth in the copy of such order described in paragraph VII of this complaint. All of the foregoing was shown by undisputed evidence adduced in the proceeding before the Commission in said case.

XI

The Commission found that where the carriers performed a transit for shippers of cotton at the same points where the carriers would stop such cotton for compression in transit for the benefit of such carriers, the services re- [fol. 17] quired of the carriers were materially less than where such transit privilege was accorded at some other point than where the carriers stop the shipments for compression, as is evidenced by the following excerpt from the decision of the Commission, as set forth in Exhibit "B," to-wit:

"The services of the carrier in handling cotton for compression are substantially the same as for concentration in so far as the movement into and out of the concentration or compress points is concerned, but when the cotton is compressed the compress companies are required to unload and load the cars. When cotton is concentrated at the point where the carrier compresses it, the service rendered by the carrier is materially less than where concentration and compression take place at different points. If the cotton is not concentrated at the compress point, the compression is usually promptly effected and the carload shipments forwarded to the concentration or destination point. If it is concentrated at the compress point, the charges for concentration or merchandising are borne by the shipper

and the charge for compression by the carrier. In many instances some of the services of concentration or merchandising for the shipper are performed by the compress company during the time the compression is being effected."

Notwithstanding the foregoing finding the Commission nevertheless excluded such consideration from that portion of its decision which relates to the relative adjustment of rates at the ports and in effect orders a continuance of the performing of transit services without charge, not only at the points where the cotton is compressed in transit by the carrier, but at other points in the interior and at the ports, and at the same time the Commission denies to your petitioners the benefit of any transit privileges at their facilities on shipments which are later moved to steamers' berths, and thereby creates an undue preference, not only for the concentrators using transit privileges upon the [fol. 17-a] railroads at points where the railroads compress the cotton, but at other interior points and other port points, and there is no competent evidence upon which to base such a finding and order, and the Commission in excluding consideration of such differences in costs and services, when dealing with that portion of the investigation which relates to the adjustment of the rates to various concentrators using port facilities and interior facilities other than those located at the compress points, has denied to your petitioners a full hearing and consideration and has issued an order which will deprive your petitioners of their property without just compensation.

XII

The carriers, who were defendants or respondents in the proceedings before the Commission denied having violated any provisions of the Interstate Commerce Act and presented testimony which showed that the export shipments of cotton involved additional and different services from those being rendered to the local shipments of cotton and denied generally that there were any illegal practices or failure to observe tariff provisions which embodied practices substantially along the lines hereinabove set forth.

XIII

It was charged in such proceedings that it was illegal for the carriers to charge the local delivery rates on shipments of cotton moving to the warehouses owned by the petitioners hereinabove mentioned and it was contended that [fol. 18] the export rates should apply, but upon this the undisputed evidence showed that where cotton moved into such warehouses, it was placed in stock and the shipments lost their identity and might thereafter be moved out by rail to other destinations, kept in storage at the same destination or moved out by water in interstate or foreign commerce and that the owner obtained complete possession of such property and that there was a complete break in the transportation at such warehouse just as there is at other warehouses where goods are merchandised and merchants stocks are maintained and the Commission correctly found that it was not illegal to apply the local delivery rates to such shipments.

XIV

The Commission found and ordered in substance that the maintenance of the export rates which were 3 cents (exclusive of wharfage) higher than local delivery rates gave to the warehouses and shippers using the warehouses owned by the petitioners above mentioned, an unnatural and unlawful preference and subjected the uptown and interior warehouses and shippers using such warehouses to an unnatural and unlawful disadvantage to and undue prejudice which conclusion is unwarranted by the evidence and is not supported by substantial evidence but is based upon the assumption that the warehouses in question are upon the waterfront and upon findings to the effect that the same are at the waterfront and that cotton placed in such warehouses is at shipside; whereas, the undisputed testimony shows that such warehouses are not upon the waterfront and that cotton located in such warehouses is [fol. 18-a] not at shipside and that the only advantage to be derived by such warehouses would come from their natural geographic location of which the Commission has no lawful authority or jurisdiction to deprive them.

XV

The Commission further ordered that the warehouses of your petitioners and the persons using the same including your petitioners should not be permitted to enjoy any benefits from their location near the waterfront, but that all advantages of such location should be taken away from them and that equalization should be made between them and the users of warehouses located remote from the waterfront and the users of warehouses located at interior points, for the purpose of compelling the carriers to bring about an equalization of commercial advantages and commercial conditions which is beyond the jurisdiction and power of the Interstate Commerce Commission and constitutes arbitrary and unwarranted action to the detriment and damage of your petitioners.

XVI

The Commission found, concluded and so ordered that the rates charged by the carriers for export shipments including the additional and different transportation services involved in such shipments should be equalized with and made no higher than the rates for local shipments which did not involve such additional services and the action [fol. 19] of the Commission in so finding and ordering is not supported by substantial evidence, but is in conflict with the undisputed evidence that additional and different services are required for the export movement and constitutes an arbitrary exercise of the regulatory power and is beyond the jurisdiction and power of the Commission to order same, all of which is to the great damage of your petitioners as will be more specifically hereinafter shown.

XVII

The Commission further found, concluded and ordered that the rates heretofore applied to the warehouses of your petitioners and charged to users of such warehouses, including your petitioners should be increased one cent per 100 pounds, which increase is wholly without warrant by the issues in the proceedings or by the evidence adduced therein. First, because the Commission specifically found

and held that the reasonableness of the rates was not in issue. Second, because no evidence was submitted to show that the existing rates were unreasonably low, or that any increase should be made therein. Third, because the Commission had already fixed such rates as maximum reasonable rates and held and ordered that any higher rates would be unreasonable and in violation of the law. Fourth, because the defendant carriers did not nor did any other interests, make any contention in said case to the effect that the existing local rates were unreasonably low or that the increases in such rates would be reasonable and lawful. Fifth, because the law required that in any proposed increase of such rates the burden of proof of reasonableness [fol. 19-a] should be upon the carriers and no such burden of proof was assumed by the carriers. Sixth, because the Commission has no authority in law to increase rates unless the reasonableness of such rates has been considered. Seventh, because your petitioners relied upon such rates as being reasonable rates under the orders of the Interstate Commerce Commission and as established by it and were not permitted or given an opportunity to offer evidence to meet any issue as to the increase of such rates.

XVIII

The Commission ordered a general increase in all local rates applicable to Houston, Galveston, New Orleans and other ports involved and your petitioners make shipments of cotton to all of such ports and such order increasing such rates is arbitrary, not based upon substantial evidence and not warranted by the issues is unlawful and void for the reasons and upon the grounds set forth in the next preceding paragraph hereof, which are hereby referred to and made a part hereof as though fully set forth herein.

XIX

The findings, conclusions and orders of the Commission place the warehouses owned by your petitioners as aforesaid and the shippers or users of such warehouses, including your petitioners at a net penalty or disadvantage in competition with other warehouses and deprive them of their property without due process in that the Commission

has ordered the carriers to transport cotton at certain rates and to include, without charge, transit privileges upon such [fol. 20] shipments of cotton where such cotton is concentrated at interior warehouses or at port warehouses other than the warehouses of your petitioners, which other port warehouses are remotely distant from the wharves and berths of steamers, and has ordered the said carriers to include without additional change the additional services in the placing of the cotton upon wharves and in the berths of steamers in delivering the same to ships within such berths in accordance with the requirements of the steamship lines; whereas, the carriers are prohibited from according similar privileges to the warehouses of your petitioners and the users of the same including your petitioners where such cotton is later moved to wharves nearby to such warehouses and while the Commission authorizes and directs the carriers to absorb the cost to such other warehouses and shippers of moving such cotton from the warehouses to the berths it prohibits the carriers from making similar absorptions to your petitioners on cotton moving to nearby wharves, which has the effect of requiring your petitioners to pay the full amount of the rate which their competitors pay for all such privileges and in addition thereto pay the expense of moving the cotton out of warehouses belonging to your petitioners (and other warehouses that may be similarly located) and placing such shipments upon the wharves in the ships' berths. The undisputed evidence in this case shows that this is a substantial additional cost and that this disadvantage will be imposed upon the plants that ordinarily would appear to be located so as to have a natural economical advantage, but the Commission orders and assures the users of other warehouses the benefit of a transit privilege and prohibits to the users of these warehouses near the waterfront any benefit of transit privilege or any allowance or absorptions similar in character to those being provided for their competitors. To illustrate [fol. 20-a] the above, reference is made to the merchants using the warehouses located at Galveston more than a mile back of the waterfront in competition with the petitioners who may be using the warehouse of Houston Compress Company. The Galveston merchant would pay 90 cents per 100 pounds for a shipment of cotton moving from

Little Rock, Ark., at the present time and the Houston merchant would pay the same, and in both cases the shipments would be received at the respective warehouses and the owner thereof would pay the cost of moving the same from such warehouse to whatever steamer's berth might later take the cotton. If the cost of moving the cotton from one warehouse to its place on the wharf is less than the cost to the other the difference is due to the natural advantage of location and to the fact that the Galveston merchant uses a warehouse more than a mile away from the waterfront whereas your petitioner uses a warehouse from which the cotton may be moved by trolley service distances ranging from 300 feet 3000 feet to a place on the near-by wharves, but in both cases the carrier gets 90 cents per 100 pounds for the movement of cotton from Little Rock to Houston or Galveston. Under the decision and order of the Commission both shippers would pay an increased rate of 1 cent per 100 pounds which would be 91 cents, but the merchant using the remote warehouse at Galveston would claim back from the railroad the cost to him for his expenses in moving the cotton by dray or other conveyance from his warehouse to the place on the wharf and in the berth where the ship would take the cotton; whereas, your petitioner not only is denied any such allowance but has to pay the increased rate and such additional sums as may be necessary to place the cotton in the berth upon the nearby wharf. The testimony in this case shows that the dray lines go into the warehouses at Galveston and [fol. 21] pick up the cotton in the warehouses, transporting it from such warehouses and place it in the steamer's berth within reach of ship's tackle, which movement is similar and analogous to the movement by electric trolley or other means of transportation from your petitioners' warehouses to steamers' berths at the near-by wharves and in the case of your petitioners the railroad would collect a net 91 cents per 100 pounds for the transportation; whereas, in the other case, it would pay back out of the 91 cents allowances which under the record in this case are shown to be as much as 4 cents per 100 pounds, all of which very effectively and effectually will deprive your petitioners of their property without due process and will penalize them in the handling of such shipments of cotton through

the warehouses which have been thus located by them at great expenses, under conditions where they would expect to obtain the advantage of location near the waterfront, and the Commission by such order exceeds its power and authority under the law, first, in that it undertakes to penalize one class of shippers for their foresight in undertaking to provide economical and well-located facilities and gives an advantage to their competitors who have less advantageously located facilities, all of which is beyond the power and jurisdiction of the Interstate Commerce Commission. Second, it deprives your petitioners of their property without due process in that the order is not supported or warranted by any substantial evidence in the cause and is therefore arbitrary and unlawful. Third, that the order is unlawful and void because the same is arbitrary and confiscates the property of your petitioners without compensation in violation of the 5th Amendment to the Constitution of the United States. Fourth, because it deprives your petitioners of their property without due process and is therefore unconstitutional and void in violation of the 14th Amendment to the Constitution of the United States.

[fol. 21-a]

XX

The order of the Commission is arbitrary, unlawful and void in that it undertakes to compel the carriers to handle export cotton traffic to Houston and the other ports at no higher rates than are maintained for handling local shipments of cotton to petitioners and other merchants located at such ports, although the export shipments and the tariffs applicable thereto embody additional and substantial services which are not involved in the handling of the local cotton shipments, and in that the order in requiring the same rates with such additional services for the competitors of your petitioners, while such additional services are not performed nor available for your petitioners, undertakes without lawful authority to equalize commercial conditions and to give preference to competitors of your petitioners to the damage of your petitioners.

XXI

That your petitioner, Texas Farm Bureau Cotton Association, exists, among other things, for the purpose of as-

suring to the producers of cotton the most economical and advantageous means and cost of distribution and transportation of cotton and respectively represents that the undisputed evidence in this case shows that any increase in the local rates to the ports will result in additional cost to the farmer or producer and respectively represents that there is no evidence in this case and no issues submitted under which the Commission can lawfully and properly authorize the carriers to increase the rate upon local shipments of cotton to the ports and that such increase in the rates will be paid or borne in whole or in part by the farm-
[fol. 22] ers including the members of this petitioner, and will be to their great detriment and damage.

XXII

The undisputed evidence before the Commission shows that the warehouses owned by petitioner, Turning Basin Compress Company, controlled through stock ownership by petitioner, Weatherford, Crump & Company, was not only not situated at the waterfront a- Houston, but that the said company did not own, control or operate any wharves and docks either public or private, but that the wharves and docks nearest to the warehouses were municipally owned and controlled facilities, and the said petitioners moved cotton and others using the said warehouse moved cotton out from said warehouse to various wharves and docks and to various other points both at Houston and elsewhere and that where such cotton moved to the nearest wharves it was necessary to employ some means of conveyance to take the cotton at varying and substantial distances from such warehouses to the particular location upon the wharves which were designated by the agents of the steamship lines as the points at which cotton should be received, all of which was at a substantial cost to petitioners and other persons utilizing such warehouses and it was also shown in said petition before the Commission that in the case of the Ship Channel Compress Company controlled by stock ownership by Alexander Sprunt & Son, Inc., petitioner, and in the case of Houston Compress Company, petitioner, controlled by stock ownership by Anderson, Clayton & Company, petitioners, that the wharves and docks were

operated separately and distinct from the warehouses belonging to such corporations and were in fact separate [fol. 22-a] facilities, the wharves and docks being general facilities for the use of every person making shipments of cotton and other commodities over such wharves via facilities that are berthed therein, and that the space upon such wharves is assigned to and controlled by the steamship companies operating steamships at such wharves and further that where the cotton in the warehouses of the respective petitioners is to be moved to the nearby wharves such cotton has to be moved via such means of conveyance as may be supplied, which movement may be by switching service from warehouses belonging to Houston Compress Company or by overhead electric trolley service or other devices and by hand-truck or tractor and trailer devices at the Ship Channel Compress Company after being removed from such warehouse must be placed in accordance with the directions of the agents of the steamship lines in the particular berth and in the particular place in such berth which the steamship line may designate, all of which constitutes a substantial cost and expense for transportation services which are similar in character to the services performed in moving shipments to such wharves from other warehouses located at Houston and to services performed in moving shipments of cotton from warehouses at Galveston to wharves located in that port and the action of the Commission in arbitrary and void in that it undertakes to authorize or require the carriers to absorb the costs or to make allowances for the costs of such services on cotton moving from other warehouses to such wharves while prohibiting such allowances on cotton moving from the warehouses of your petitioners to the same wharves.

[fol. 23] XXIII

The aforesaid order of the Commission is null and void and constitutes a taking of the property of petitioners and each of them without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason, among others, that it increases the rate on cotton being handled by your petitioners without giving them an opportunity to be heard as to the lawfulness and reasonableness of such increased rates.

XXIV

The aforesaid order of the Commission is null and void and constitutes a taking of the property of your petitioners (other than petitioner, Texas Farm Bureau Cotton Association) without due process of law and without authority for the reason, among others, that it deprives your petitioners of the benefit of the location of their warehouses and facilities constructed for the purpose of handling such shipments and imposes penalties upon the same, while at the same time ordering preferential services to be performed for competitors of said petitioners who own or utilize facilities located elsewhere and will thereby seriously impair the ability of petitioners to engage in said commerce and will impair the value of petitioners' facilities.

XXV

The aforesaid order of the Commission is null and void for the reason, among others, that the Commission has no [fol. 23-a] jurisdiction or power under the law to require or to authorize common carriers, respondents in said cause, to deprive your petitioners (other than the Texas Farm Bureau Cotton Association) of the benefits of their geographic location and of the right to enjoy the natural advantages of the location of their facilities for handling said shipments of cotton.

XXVI

The aforesaid order of the Commission is null and void and without authority of law for the reason, among others, that the Commission undertakes in its order to regulate competition among warehouses and compresses at Houston and Galveston and other ports engaged in the storage, compression and handling of cotton for shippers, and whereas, the law confers no jurisdiction upon the Commission to make such regulation.

XXVII

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evidence before the Commission to show that the existing rates

on cotton being charged your petitioners are unjust or unreasonable or to show that such existing rates should be increased, and for the further reason that the Commission adjudged and held that no issue as to the measure or reasonableness of the existing rates was involved in the said proceeding in which its order was issued.

[fol. 24] XXVIII

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evievidence to support the finding and order of the Commission to the effect that the rates charged by the carriers for the transportation of export cotton traffic and for the services involved in connection with such transportation (exclusive of the charges for wharfage) and as a part thereof and unlawful and discriminatory to the extent that the same may exceed the contemporaneous rates charged for the transportation of local shipments of cotton to the same destinations including the services that are incidental to such transportation.

XXIX

The aforesaid order of the Commission is null and void for the reason that there is no competent evidence upon which to support its finding that the application of the same rates for the transportation of cotton to the warehouses of your petitioners as are charged to up-town or other warehouses at Houston and Galveston constitutes any unlawful practice and for the further reason that there is no evidence to show any damages to the users of such other warehouses by reason of the rates charged.

XXX

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evidence to support the finding of the Commission to the [fol. 24-a] effect that the adjustment of rates on cotton moving to warehouses and facilities used by your petitioners and on cotton moving to other warehouses and facilities located at Houston, Galveston and other Ports, is unjustly prejudicial against such other warehouses and the persons

using the same and unduly preferential of your petitioners or that the other warehouses which are referred to as "uptown" warehouses and the persons using the same are in any manner damaged by reason of the adjustment of rates applicable to cotton moving to such warehouses and to cotton moving to the warehouses of your petitioners.

XXXI

The aforesaid order of the Commission is void for uncertainty in that the same does not indicate what provisions of the law are violated or what particular acts constitute violations thereof and in that the Commission in such decision and order finds and assumes the export traffic and the services performed in the movement of export cotton traffic is a like kind of traffic and a like and contemporaneous service with local delivery traffic which is not for export and which does not receive like services, but constitutes a different kind of traffic, a different character of service and therefore cannot be in violation of those provisions of the law relating to discriminations as between various persons as defined in Section Two of the Interstate Commerce Act, nor does the decision point out in what manner Section Two or any other prohibition of such Act is violated by the carriers or in what manner any undue or unreasonable preference or advantage is enjoyed by your petitioners or other persons or what undue or unreasonable prejudice or disadvantage or unjust discrimination is imposed upon other persons.

[fol. 25]

XXXII

The orders of investigation issued by the Commission in this cause brought in issue rates, fares, charges and regulations which have been imposed by the authority of the State of Texas at Houston, Galveton and other points and by authority of the State of Louisiana at New Orleans, and your petitioners allege that the Commission did not have any jurisdiction or authority to dispose of any such issues or make any orders which would affect the rates, regulations and charges imposed by the authority of such states for the reason that the Commission, so petitioners are informed and believe, did not cause the State of Texas and

the State of Louisiana to be notified of the proceeding as required under the provisions of Paragraph Three of Section 13 of the Interstate Commerce Act and such order is therefore unlawful and void.

XXXIII

Your petitioners allege that the order of the Commission is null and void in that the same is in violation of that provision of the Transportation Act of 1920 known as Section 500, by which it was declared to be the policy of the Congress to promote, encourage and develop water transportation, service and facilities in connection with the commerce of the United States, for the reason that the said order of the Commission would impair and hinder the development of the facilities for the handling of commerce at the Port of Houston and at other ports by penalizing the location of the facilities adjacent to the water front and would be in violation of the law and, therefore, void.

[fol. 25-a] XXXIV

If the aforesaid order of the Commission is not enjoined and set aside, petitioners and each of them will be seriously injured and impaired in their ability to transact their business of buying, selling and shipping cotton in competition with other persons engaged in such business and the value and use of their facilities for the handling of such cotton will be seriously impaired, if not destroyed, and your petitioners will suffer great and irreparable damage and injury not only in the payment of additional freight or transportation charges under said order amounting to many thousands of dollars per year, but in the damage to them by reason of the impairment of their ability to transact their business is a profitable manner and to enjoy and use the facilities which they have created at great cost and expense for such purpose and they will have no adequate remedy at law to recover all or any part of such damage.

XXXV

That the carriers, respondents in said proceeding, are commanded by the said order to establish and place in effect such rates, fares, charges, and practices as are embodied

in said order not later than July 16, 1927, and unless said order be enjoined and set aside, the said carriers will carry out and enforce the same to the irreparable damage and injury of your petitioners as aforesaid.

Wherefore, premises considered, inasmuch as your petitioners are remediless in the premises, and by the strict rules of common law, and if the enforcement of the said order of the Commission of April 4, 1927, and its said order of June 23, 1925, as made a part thereof, is not stayed and enjoined, will suffer irreparable damage, and to the end [fol. 26] that they may obtain the relief to which they are entitled, petitioners do respectfully pray:

First. A permanent injunction decreeing that the said order be set aside, annulled and suspended, and its enforcement, operation and execution be forever enjoined.

Second. An interlocutory injunction suspending the enforcement, operation and execution of said order, in whole or in part, and setting aside the same.

Third. A temporary stay or suspension of the operation of said order for not more than sixty days pending the application for other orders herein prayed for.

Fourth. Such other and further relief as may be proper in the premises.

To the end that the above relief may be obtained, your petitioners respectfully request that your Honors direct that a Writ of Subpoena be directed to defendant and that service be had in the manner provided by law, commanding it on a day certain to appear and answer this Bill of Complaint, but not under oath, and to grant unto your petitioners such hearing or hearings as shall be meet and proper in order to enable the court to grant the relief prayed for, and to command the defendant to abide by and perform such order or orders or decrees as to the court may seem proper and required by the principles of equity and good conscience.

Fulbright, Crooker & Freeman, R. C. Fulbright, R. L. Botts, C. K. Bullard, Solicitors for Plaintiffs.

[fol. 26a] *Duly sworn to by W. L. Clayton. Jurat omitted in printing.*

7/2/27.

Ordered that rule issue to Defendant to Appear before the legally constituted court at New Orleans, La., consisting of 3 Judges, on Tuesday, July 12th, at 10:30 A. M. to show cause why the restraining order and or the temporary injunction prayed for should not issue.

J. C. Hutcheson, Jr., Judge.

[fol. 27] EXHIBIT A TO BILL OF COMPLAINT

Appendix

Respondents in I. C. C. Dockets 14940, 13991 & 11965

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; The Nacogdoches & Southeastern Railroad Company; Mobile & Ohio Railroad Company; New Orleans & Northeastern Railroad Company; Southern Railway Company; Cisco & Northeastern Railway; Louisiana & Arkansas Railway Company; Louisville & Nashville Railroad Company; Ouachita & Northeastern Railroad Company; Aransas Harbor Terminal Railway Company; Arkansas and Louisiana Missouri Railway Company; Arkansas Railroad; Bartlett-Western Railway Company; Cache Valley Railroad Company; Combs, Cass & Eastern Railroad Company; Dayton-Goose Creek Railway Company; DeQueen & Eastern Railroad Company; Doniphan, Kensett & Searcy Railway; East Texas & Gulf Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fourche River Valley & Indian Territory Railway Company; Garyville Northern Railroad Company; Glenmore & Western Railroad Company; Groveton, Lufkin & Northern Railway Company; The Gulf & Sabine River Railroad Company; Gulf, Texas & Western Railway Company, and W. Frank Knox, Receiver; Jefferson & Northwestern Railway Company; Lufkin, Hemphill & Gulf Railway Company; The Motley County Railway Company; Natchez, Urania & Ruston Railway Company;

New Orleans, Natalbany & Natchez Railway Company; [fol. 27a] North Louisiana & Gulf Railroad Company; Okmulgee, Northern Railway Company; Paris & Mount Pleasant Railroad Company, and R. W. Wortham, Receiver; Red River & Gulf Railroad Company; Sugar Land Railway Company; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Trinity Valley Southern Railroad Company; Wichita Falls & Southern Railroad Company; Missouri Pacific Railroad Company; Eastland, Wichita Falls & Gulf Railroad Company; Miami Mineral Belt Railroad Company; Oilfields Short Line Railroad Company; San Antonio, Uvalde & Gulf Railroad, and A. R. Ponder, Receiver; Warren & Saline River Railroad Company; Alexandria & Western Railway Company; Neame, Carson & Southern Railroad Company; Pecos Valley Southern Railway Company; San Antonio & Aransas Pass Railway Company; Angelina & Neches River Rail road Company; Central Railway Company of Arkansas; Clinton & Oklahoma Western Railway Company; Louisiana Railway and Navigation Company; Missouri & North Arkansas Railroad Company; Oklahoma, New Mexico & Pacific Railway Company; Wichita Falls, Ranger & Fort Worth Railroad Company, and J. W. Mitchell and Frank L. Ketch, Receivers; The Beaumont, Sour Lake & Western Railway Company; The Denison & Pacific Suburban Railway Company; Houston & Brazos Valley Railway Company, and George C. Morris, Receiver; International & Great Northern Railway Company; Louisiana Southern Railway Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railway Company; The Orange & Northwestern Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; San Benito & Rio Grande Valley Railway Company; The Texas & Pacific Railway Company, and J. L. Lancaster [fol. 28] and C. L. Wallace, Receivers; Abilene & Southern Railway Company; The Brimstone Railroad & Canal Company; Midland Valley Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Fort Worth & Denver City Railway Company; The Trinity & Brazos Valley Railway Company, and J. A. Hulen, Receiver; The Wichita Valley Railway Com-

pany; Gulf, Mobile & Northern Railroad Company; Mississippi Central Railroad Company; New Orleans Great Northern Rairoad Company; St. Louis Southwestern Railway Company of Texas; The Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; Illinois Central Railroad Company; Missouri, Kansas & Texas Railway Company, and B. F. Babbitt, Receiver; The Missouri, Kansas & Texas Railway Company of Texas, and Charles E. Schaff, Receiver; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Panhandle & Santa Fe Railway Company; The Yazoo & Mississippi Valley Railroad Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company; Iberia & Vermillion Railroad Company; Lake Charles & Northern Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Southern Pacific Company; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Arkansas Western Railway Company; Brownwood North & South Railway Company; The Chicago, Rock [fol. 28a] Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Fort Worth & Rio Grande Railway Company; The Kansas City Southern Railway Company; Paris & Great Northern Railroad Company; The Poteau Valley Railroad Company; Quanah, Acme & Pacific Railway Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco & Texas Railway Company; Texarkana & Fort Smith Railway Company; Asherton & Gulf Railway Company; Beaver Meade & Englewood Railway Company; Caddo & Choctaw Railroad Company; Christic & Eastern Railway Company; Dardanelle & Russelville Railroad Company; El Dorado & Wesson Railway Company; Fordyce & Princeton Railroad Company; Fort Smith & Western Railroad Company; The Franklin & Abbeville Railway Company; Fredericksburg & Northern

Railway Company; Freeo Valley Railroad Company; Gulf & Northern Railway Company; Jonesboro, Lake City & Eastern Railroad Company; Kansas City, Mexico & Orient Railroad Company, and Wm. T. Kemper, Receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas, Oklahoma & Gulf Railway Company; Kansas, Oklahoma & Gulf Railway Company of Texas; Kinder & Northwestern Railroad Company; Louisiana & Northwest Railroad Company; Louisiana & Pacific Railway Company; Monroe & Texas Railroad Company; Moscow, Camden & San Augustine Railway Company; Oakdale & Gulf Railway Company, Prescott & Northwestern Railroad Company; Rio Grande & Eagle Pass Railway Company; Roscoe, Snyder & Pacific Railway Company; San Antonio Southern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; Texas City Terminal Railway Company; The Texas-[fol. 29] Mexican Railway Company; Texas Midland Railroad; Texas Southeastern Railroad Company; Trinity Valley & Northern Railway Company; Warren & Ouachita Valley Railway Company; Woodworth & Louisiana Central Railway Company; Black Bayou Railroad Company, and W. H. Welch & F. Cowherd, Receivers; Blytheville, Burdette & Mississippi River Railway Company; Caro Northern Railway Company; Eastern Texas Railroad Company; Kentwood & Eastern Railway Company; Loranger, Louisiana & Northeastern Railroad Company; Midland & Northwestern Railway Company; Port Bolivar Iron Ore Railway Company; Rio Grande, El Paso & Santa Fe Railroad Company; Roby & Northern Railroad Company; St. Louis, El Reno & Western Railway Company, and K. E. Humphrey, Receiver; The Timpson & Henderson Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Zwolle & Eastern Railway Company; Augusta Railroad Company; Butler County Railroad Company; Beaumont & Saratoga Transportation Company; Brownsville & Matamoras Bridge Company; Bauxite & Northern Railway Company; Beaumont Wharf & Terminal Company; Cairo, Truman & Southern Railroad Company; Dallas, Cleburne & Southwestern

Railway Company, and Wm. G. Breg, Receiver; Dallas Terminal Railway & Union Depot Company; The Denison, Bonham & New Orleans Railroad Company, and Wm. G. Breg, Receiver; El Paso Southern Railway Company; El Paso Union Passenger Depot Company; Forth Worth Belt Railway Company; Galveston Wharf Company; Galveston, Houston & Henderson Railroad Company; Gulf Terminal Company; Galveston Terminal Railway Company; Graysonia, Nashville & Ashdown Railroad [fol. 29a] Company; Houston Belt & Terminal Railway Company; Kansas City, Shreveport & Gulf Terminal Company; L'Anguille River Railway Company; Lake Providence, Texarkana & Western Railroad; Louisiana Railway & Navigation Company of Texas; Leesville, Slagle & Eastern Railway Company; Montana Railroad; New Orleans Public Belt Railroad; New Orleans & Lower Coast Railroad Company; Oklahoma-Southwestern Railway Company; Oberlin, Hampton & Eastern Railway Company; Pine Bluff & Northern Railway Company; The Shreveport Bridge & Terminal Company; Trans-Mississippi Terminal Railroad Company; Thornton & Alexandria Railway Company; The Union Passenger Depot Company of Galveston; The Union Terminal Company; Uvalde & Northern Railway Company; Waco, Beaumont, Trinity & Sabine Railway Company; and West Tulsa Belt Railway Company.

EXHIBIT B TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 14940.*

Application of Rates on Cotton to Gulf Ports

Submitted October 9, 1924. Decided June 23, 1925

1. Practice of applying interstate domestic rates on shipments of cotton delivered to warehouses and com- [fol. 30] presses at the Gulf ports, where delivery is effected at a point other than ship side, found not illegal.

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*NOTE.—Embraces also No. 13991, Weatherford, Crump & Company vs. Abilene & Southern Railway Company et al.

2. Present relationship between the domestic and export rates found unduly prejudicial to warehouses and compresses located at interior points and back from the water-front at the ports, and unduly preferential of warehouses and compresses located on the water front. Carriers directed to readjust their rates so that the export rates will not exceed the domestic rates by more than the wharfage charges.

REPORT OF THE COMMISSION

MEYER, Commissioner:

For a number of years the export rates on cotton from Arkansas, Louisiana, Oklahoma, and Texas to the Gulf ports have been higher than the domestic rates, the difference representing the approximate average cost of transferring cotton from the back-from-the-water warehouses or compresses at the ports, hereinafter referred to as the uptown facilities, to shipside. For example, the domestic rates on cotton from Texas common points to Houston and Galveston is 80 cents, and the export rates are 85 cents to Houston and 85.5 cents to Galveston. Rates are stated in cents per 100 pounds. The approximate average cost of transferring cotton from the uptown facilities to ship side is 3.5 cents per 100 pounds at both points, and the wharfage charges are 1.5 cents per 100 pounds at Houston and 2 cents at Galveston. Therefore 5 cents at Houston and 5.5 cents at Galveston represents the difference between the export and domestic rates, or, dropping the wharfage charges, 3.5 cents at both ports. The practice of making the export rates [fol. 30a] higher than the domestic rates by an amount sufficient to equalize the uptown and interior warehouses and compresses was approved in Louisiana Cotton, 46 I. C. C. 451, and Galveston Commercial Asso. vs. A. & V. Ry. Co., 77 I. C. C. 388. Hereinafter in referring to the difference between the export and domestic rates only the difference exclusive of the wharfage charges will be intended.

So long as all the warehouses and compresses at the ports remained back from the water, the practice of making the export rates higher than the domestic rates by an amount not more than the cost of delivering cotton from the uptown facilities to ship side equalized the interior and port facili-

ties and all parties were satisfied with the arrangement. But commencing in 1921 disturbing influences were injected into the situation through the placing of high-density compresses on the piers of the Galveston Wharf Company at Galveston, followed by the erection of large warehouses with compresses on the water front at Houston. The compresses are so situated on the piers at Galveston that about 25 per cent of the cotton which they handle is delivered by hand trucks directly to ship side at the piers where the compresses are located, and about 75 per cent is drayed to ships lying at other piers. The water-front warehouses at Houston are so situated that all the cotton which they handle can be hand trucked to ship side. The tariffs do not define ship side delivery, but under the practice at these ports it consists of delivery to within 200 feet of ship's tackle. The water-front warehouses at Houston are so arranged that a considerable part of the storage space in them may be placed within that distance from ship's tackle by the judicious berthing of ships, and from such space cotton is taken by the ship's stevedores. Shifting of vessels from one berth to another is practiced at Houston, so that on a large [fol. 31] part of the cotton stored in these warehouses the hand trucking from warehouse to ship is actually performed by the vessel employees.

Cotton consigned to the wharf presses at Galveston, and to the water-front warehouses at Houston, under domestic bills of lading which do not disclose an intention later to export, is charged the domestic rates the same as cotton consigned to the uptown facilities under similar billing. It is the practice of the carriers to assess the export rates only on cotton which is consigned to the Texas ports under through export bills of lading or domestic bills of lading marked "for export," or which, moving in under domestic bills of lading, is declared for export after arrival at the port. The tariffs permit warehouses or compresses at the Texas ports to declare cotton for export which has moved in under domestic rates and which has been merchandised or compressed at the port. The carriers will then collect the higher export rates and assume the cost of delivering the cotton by switch movement or dray from the warehouses or compresses to ship side. If switching is resorted to the carriers absorb the switching charges out of the ex-

port rates, and if delivery is effected by dray employed by the shipper the carriers will make a maximum allowance of 20 cents per bale, or an average allowance of about 3.5 cents per 100 pounds, to cover *an average allowance of about 3.5 cents per 100 pounds, to cover* the drayage cost. During the cotton shipping season the grain movement is also heavy, causing cars to be in great demand, and the carriers state that they find it more economical to pay the shippers a drayage allowance than to use their cars for switching the cotton. Inasmuch as the difference between the export and domestic rates is approximately equal to the cost of delivery from the uptown facilities to ship side, it will be seen that little if anything would be gained by declaring the cotton for export with the attendant readjust-[fol. 31a] ment of charges, and in practical operation the export rates are actually collected on very little of the cotton which goes through these facilities. Rather the uptown facilities pay the domestic rates and have the cotton drayed to ship side at their own expense without further recourse to the carriers. The same practice is followed on cotton going to the presses located on the wharves at Galveston.

The compression which takes place at the ports is high-density compression. The ocean rates on cotton compressed to high density are lower than on standard compressed cotton by an amount slightly greater than the cost of the high-density compression.

The first indication of dissatisfaction with existing conditions arose when the complaint in No. 13991 was filed. That complaint was presented by a warehouse company at Houston which merchandised or compressed cotton at that point and then reshipped it under transit provisions to Galveston for export. Such cotton moved under through export bills of lading from Houston and the higher export rates were assessed. As before pointed out, cotton consigned to the compresses located on the piers at Galveston would move in under domestic bills of lading and the lower domestic rates would be assessed. Complaint in No. 13991 contended that the service rendered by the carriers on shipments of cotton merchandised or compressed at its facilities in Houston, and then forwarded on export bills of lading through Galveston, was substantially similar to that afforded in connection with shipments consigned to

the wharf compresses at Galveston, and that the charging of the higher export rates on its shipments constituted undue prejudice with resultant damage for which reparation is sought. Unreasonableness was also alleged, but that allegation was withdrawn at the hearing.

[fol. 32] Following the hearing in No. 13991, we received communications from cotton interests at Galveston and interior Texas points stating that large warehouses had been constructed on the water front at Houston, and that the collection of the lower domestic rates on cotton going to those warehouses unduly preferred them to the prejudice of the uptown and interior warehouses. The question of the legality of applying the lower domestic rates on cotton going to the water-front facilities was also raised and we were asked to institute a general investigation into the whole situation. Accordingly, on June 30, 1923, the order in No. 14940 was issued, instituting a general investigation concerning the lawfulness and propriety of the practices of carriers in connection with the application of interstate domestic rates and export rates on cotton from points in Oklahoma, Arkansas Texas, and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumont, and Port Arthur, Texas, New Orleans, La., and Mobile, Ala., including subports of any of said ports, with a view to determining:

"(1) Whether the practices now alleged to be followed by certain carriers and shippers in applying domestic rates, which are lower than the corresponding export rates, on cotton delivered to water-front warehouses and subsequently exported are authorized by existing tariffs, or whether such practices, or any of them, constitute illegal practices; and

"(2) Whether any change should be made in existing tariff regulations or rates in order to avoid and remove such undue preference, if any, that results or may result in favor of said water-front shippers or localities, and such undue prejudice, if any, that results or may result against said uptown shippers or localities that may be found to exist."

[fol. 32a] No. 13991 was reopened and consolidated with the general investigation. Similar investigations were in-

stituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the application of the intrastate rates in those States, and the hearings were held jointly with those commissions.

Taking up first the question of the legality of applying domestic rates on cotton delivered to the water-front warehouses or compresses:

The tariffs vary somewhat as to the form in which the rates applicable to export shipments are published, but in one way or another the carriers hold themselves out to effect ship side deliveries under those rates. Cotton delivered to the water-front warehouses or compresses is not delivered at ship side. Rather it is delivered into the custody of the warehouses or compresses at points more than 200 feet from ship's tackle, and, after merchandising or compressing, must be hand trucked at Houston, and hand trucked or drayed at Galveston, to a place where it will be accepted by the ship. A shipment of cotton going into a warehouse for merchandising usually contains several grades of cotton, and after merchandising may move out to several different destinations. Merchandising consists of weighing, sampling, marking, and grading the cotton and arranging it in lots of even grade.

Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate if the service which the carrier holds itself out to perform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character which would be effected on a domestic shipment is made, we are of opinion that it is not illegal to apply the interstate domestic rate [fol. 33] even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic rates on cotton delivered to the water-front warehouses or compresses at Houston and Galveston is not, in our judgment, illegal. In view of the fact that the interstate and intrastate rates on cotton from Texas points to the ports for other than ship side deliveries are the same, it is unnecessary to pass upon the question whether shipments moving

under domestic bills of lading from interior Texas points to the warehouses or compresses at Houston and Galveston are moving in export or intrastate commerce.

Turning now to the question of whether there should be any change in the present rates:

Both the uptown facilities at Galveston and the warehouses situated at interior Texas points contend that the water-front facilities at Houston have an unfair rate advantage under the present adjustment. The water-front facilities, on the other hand, contend that they have no advantage to which they are not justly entitled by reason of their location. They state that they have expended large sums of money for the acquisition of water frontage and that their uptown competitors have been influenced in the selection of their present locations by the fact that sites are cheaper back from the water than on the water front. They cite I. C. C. v. Diffenbaugh, 222 U. S. 215, wherein the Supreme Court said that the law does not attempt to equalize fortune, opportunities, or abilities. They further contend that merchants using interior warehouses now have an advantage over merchants using the port warehouses and that this advantage would be accentuated if the present differ- [fol. 33-a] ence between the export and domestic rates was removed or narrowed. This advantage they explain as follows: Merchants using interior warehouses and shipping under through export bills of lading from these warehouses to foreign destinations pay but one merchandising charge, which amounts to about 25 cents per bale. On the other hand, merchants using the warehouses at the ports purchase a part of their cotton at the interior warehouses and then have it again merchandised at the port at an additional merchandising charge of from 50 to 65 cents per bale. A bale of cotton will weigh in the neighborhood of 500 pounds, and the port merchant therefore pays on this class of cotton from 10 to 13 cents per 100 pounds more for merchandising service than the interior merchant. But this is purely a commercial disadvantage which can be obviated by the port merchant purchasing direct from the country buyer instead of at the interior warehouses and has nothing to do with the trasportation of the cotton.

The waterfront facilities and the carriers contend that the transportation costs connected with the carriage of ship-

ments to the ports under through export bills of lading are greater than those connected with domestic shipments to the ports, and that the value of the service to the shipper is greater. They state that it costs more to make out an export bill of lading than a domestic bill of lading; that there is more telegraphing and telephoning, added messenger service, and greater free time accorded export shipments than domestic shipments. As before pointed out, however, the export rates are not confined in their application to shipments moving on through export bills of lading, and the added elements of cost mentioned above would vary per unit of 100 pounds, dependent upon the size of the total consignment. Furthermore, the Galveston interests show that the [fol 34] average detention of cars containing export shipments is little if any greater at that port than the average detention of cars containing domestic shipments. The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates. Especially is this so when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity.

The tariffs permit only one free stop in transit for merchandising. If a second stop is made a transit charge is assessed. We will compare the transportation charges accruing under the present rate adjustment against a shipment originating at an interior point in Texas common-point territory, merchandised or compressed at an uptown facility at Galveston or Houston, and then transferred to ship side, with those accruing against a similar shipment, originating at the same point, merchandised or compressed at a waterfront warehouse at Houston, and then delivered to ship side. Upon delivery of the shipment at the uptown facility the railroad would collect the domestic rate of 80 cents, and if, after merchandising or compressing the cotton, the shipper declares it for export, the railroad would collect in addition the difference between the export and domestic rate of 3.5 cents per 100 pounds. The railroad would then switch the cotton to ship side, or make an allowance to the shipper to cover what the shipper had to pay a drayman to haul the cotton to ship side, subject to a maximum of 20 cents per bale. Or the shipper might merely pay

the rate of 80 cents and then hire the cotton drayed without further recourse to the railroad. In either event, however, it would cost him on the average 83.5 cents per 100 pounds, exclusive of wharfage, to get the cotton to ship side. If he [fol 34-a] pays the 83.5-cent rate, he would be entitled to one free transit privilege. On the other shipment which went to the water-front warehouse the railroad would collect the rate of 80 cents, and the only added cost to get the cotton to ship side, exclusive of wharfage, would be the cost of hand trucking it from the place where it is stored in the warehouse to ship side. As before pointed out, a large part of this hand trucking is done by employees of the ship. Also, such a shipment might be stopped once in transit for merchandising under the 80-cent rate. There is, of course, some hand trucking at the uptown facilities to get the cotton to the railroad car or to the dray, which may in some cases be greater and in others less than that at the water-front facilities.

As contended by the water-front facilities it is not our function arbitrarily to equalize rates in such manner as to deprive any industry of the legitimate advantage of its location. But we do not think that such a situation is presented here. Rather the question before us is whether we shall permit this somewhat unusual adjustment of rates to be continued now that the conditions which previously justified it have changed, and it is shown that it gives to large and powerful interests an advantage over their competitors. Usually the same rate applies to all industries on the same road within the switching limits of a municipality, and ship-side rates, if higher than the domestic rates, are only enough higher to cover the strict wharf or pier charges, such as handling, from car to ship side, and wharfage. The rates under consideration are not so made. Rather there is a difference of 3.5 cents in the rates not accounted for by the wharf or pier charges. Unloading charges are absorbed on both domestic and export shipments.

[fol. 35] Under the present adjustment the uptown facilities can secure what in substance is a second merchandising or compression-in-transit service free of charge. This is secured through the shipper paying the domestic rates and then having his shipments drayed from the warehouse to ship side without declaring them for export. The uptown

facilities contend that under any readjustment that is made in the rates they should continue to receive a free second merchandising or compression in transit on cotton purchased by them which has already been concentrated at the through rate. This we do not consider a reasonable request. Shipments stopped at other points for second merchandising or compressing must pay a transit charge and we see no reason why an exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton passing through these uptown facilities is, however, entitled to one free transit privilege.

We are of opinion that the present adjustment of rates on cotton from Oklahoma, Arkansas, Texas and Louisiana to the Texas Gulf ports is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses, and that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge, which at Galveston is 2 cents and at Houston 1.5 cents. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Most of the testimony offered pertained to the situation at Houston and Galveston, but representatives of other Texas ports stated that any change made at Houston or Galveston should be extended to the other Texas ports in order to preserve the relation-[fol. 35a] ships now existing. The investigation did not cover the reasonableness of the rates and our findings herein are not to be construed as authorizing the carriers to increase their present revenues. Rather, the rates should be so readjusted as to preserve existing revenues.

At New Orleans there are no strictly water-front facilities, and no complaint exists with regard to the present relationship of the export and domestic rates at that point. No evidence was introduced with regard to Mobile. We shall, therefore, suggest no change in the rates through ports other than the Texas ports at this time; but if, by reason of the changes suggested in the rates to the Texas ports, it becomes necessary to change any of the existing rates to

other ports, that matter may be brought to our attention for further consideration.

Complainant in No. 13991 has failed to prove damages and its prayer for reparation is denied.

HALL, Commissioner, dissenting:

"As stated in the majority report the practice of making the export rates higher than the domestic rates by an amount sufficient to equalize the uptown warehouses in ports and those in the interior was approved in Louisiana Cotton, 46 I. C . C. 451, and Galveston Commercial Asso. vs. A. V. Ry. Co., 77 I. C. C. 388. In the former case we said:

"The respondents have shown that unless the rates from Louisiana points to New Orleans for export exceed the rates to the same place for local delivery by not more than 3 cents injustice to the interior points will result. The converse is true as to rates for export that exceed the local rates by less than 3 cents, and any diminution in this spread is an advantage to the interior points, and a disadvantage to New Orleans. To that extent we find that the rates from [fol. 36] Shreveport and from other points taking similar rates to New Orleans proper under the proposed adjustment should be reduced in order to preserve the spread of 3 cents. In other words, when the rate for ship side, or for export, is 52.5 cents the rate for depot delivery should not exceed 49.5 cents."

And in the second case cited we said:

"It is obvious that a uniform basis for fixing export rates on cotton from the Southwest to New Orleans and the Texas ports should be established, and that export rates which exceed the domestic rates by the amount of the charge for moving the cotton from the rail terminus to ship side are not only reasonable and proper but are necessary to avoid the discrimination pointed out in Louisiana Cotton, supra. * * * (Id. 413.)"

Now that practice is found to be unduly prejudicial on the ground that the conditions which previously justified it have changed. The nature and extent of that change are

not disclosed. The only apparent change is the recent location of warehouses and compresses on the water front at Houston and Galveston. On much of the cotton handled through water-front facilities an additional expense is incurred to place it within reach of ship's tackle. At Galveston about 25 per cent is delivered by hand trucks to ship side and about 75 per cent is drayed. It also appears from the majority report that in practical operation the uptown facilities pay the domestic rates and have the cotton drayed to ship side at their own expense.

There is nothing in the report to show whether it costs the uptown facility more or less than it costs the water-front facility to place its cotton within reach of the ship's tackle. True, at Houston, by particular berthing of ships, [fol. 36-a] some warehouses can be brought within reach of the ship's tackle, but that is not a transportation condition and it is with transportation conditions that we must deal.

The majority report disclosed no facts which would indicate the extent, if any, of the disadvantage of the uptown facilities or what may be their countervailing advantages. Each facility may choose the location which on the whole it prefers. If that location has some disadvantages it does not follow that the carriers may be called upon to cure them by readjustment of rates. One facility selects the water front, another a site one mile from the water front, and the third a site five miles from the water front. It may cost the third more than the first to place cotton within reach of ship's tackle and not less than the first to place cotton somewhere else. But the carrier will have performed the transportation service when it delivers the cotton for each at the billed destination under the same published rate. Our former solicitude for the interior point seems to have shifted to the uptown facility at the port. Nothing that was said before is here unsaid. We simply forget it or ignore it. If we were right then we cannot be right now. Construction of a warehouse on a pier can not change the rights of interior points as against the rights of ports, both served by the same connecting rails, to rates that are reasonable and free from undue prejudice. It seems to me that the action of the majority may be characterized as arbitrary, in a legal sense, and thus comes within the condemnation expressed by the Supreem Court in I. C. C. vs. Diffenbaugh, 222 U. S. 215.

[fol. 37] Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE IN WASHINGTON, D. C., ON THE 23D DAY OF JUNE, A. D. 1925

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

WEATHERFORD, CRUMP & COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

It appearing, that by order dated June 30, 1923, the Commission reopened the proceeding in No. 13991 for further hearing and entered upon an investigation in that proceedings and in No. 14940 into and concerning the application of rates on cotton to Gulf ports;

It further appearing, That full investigation of the matters and things involved has been had and that the Commission has, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

And it further appearing, That the Commission has found in said report that the present adjustment of interstate domestic rates and export rates on cotton from points on the lines of respondents and above-named defendants in Oklahoma, Arkansas, Texas and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumoint and Port Arthur, Texas, [fol. 37-a] including subports of any of said ports, is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses at said ports, and that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the respective ports, except that the export rates on the traffic described should be made higher than the domestic rates on similar traffic to the same ports by an amount equal to the wharfage charge at the respective ports.

It is ordered, That the respondents in No. 14940, and above-named defendants be, and they are hereby, notified and required to cease and desist, on or before October 12, 1925, and thereafter to abstain from practicing the undue prejudice and preference found in said report to exist.

It is further ordered, That said dependents and respondents be, and they are hereby notified and required to establish, on or before October 12, 1925, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply interstate demestic rates and export rates, charges, regulations and practices, in the manner indicated in said report, which will prevent and avoid the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 38] EXHIBIT C TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF DECEMBER, A. D. 1925

No. 11965

GALVESTON COMMERCIAL ASSOCIATION et al.

v.

ALABAMA & VICKSBURG RAILWAY COMPANY et al.

Upon further consideration of the record in the above entitled proceeding, and of the petition of defendants for modification of the order entered therein on the 2nd day of February, 1923, to permit of a readjustment of rates now in effect to Gulf ports under the terms of such order to comply with our findings in Rates on Cotton to Gulf Ports, 100 I. C. C. 159, and order of June 23, 1925, in Docket Nos. 14940 and 13991.

It is ordered, That the above entitled proceeding be, and it is hereby reopened and assigned for further hearing in connection with Dockets Nos. 14940 and 13991 on the question of whether the order therein should be modified.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 38-a] EXHIBIT D TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF DECEMBER, A. D. 1925

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

WEATHERFORD, CRUMP & COMPANY

v

ABILENE & SOUTHERN RAILWAY CO., et al.

Order

Upon further consideration of the record in the above-entitled proceedings and of petitions filed by parties thereto,

It is ordered, That the order of June 30, 1923, in Docket No. 14940 entering upon an investigation into and concerning the lawfulness and propriety of the practices of respondent carriers in connection with the application of interstate domestic and export rates on cotton from points in the states of Oklahoma, Arkansas, Texas and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas, New Orleans, La., and Mobile, Ala., and subports of any of said ports be, and it is hereby broadened to include therein the determination of (a) what services are accorded and what charges, payments or allowances are made by said carriers in connection with the handling of cotton at interior points, including payments for compression, and

whether any of such services, charges, payments or allowances result or may result in unjust discrimination or un-
[fol. 39] due prejudice or preference, or otherwise violate any provision of the interstate commerce act, and what changes, if any, should be made in such services, charges, payments, or allowances; and (b) whether the findings in said proceedings shall be extended to any ports in Texas, Louisiana or Alabama, other than those specified above.

It is further ordered, That said proceedings be, and they are hereby reopened for further hearing in order to determine whether conditions exist which were not developed during the previous hearings, or whether changes have since taken place which would justify any modification of our findings in Rates on Cotton to Gulf Ports 100 I. C. C. 159, and the order entered in Dockets Nos. 14940 and 13991 on June 23, 1925; to determine what rates shall be established to comply with our findings and order; and to determine the issues set forth in the next preceding paragraph hereof.

It is further ordered, That the effective date of our order of June 23, 1925, as modifled to become effective February 12, 1926, be, and the same is hereby postponed until further order of the Commission.

And it is further ordered, That these proceedings be set for further hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 39-a] EXHIBIT E TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 14940

Application of Rates on Cotton to Gulf Ports

Submitted October 14, 1926. Decided April 4, 1927.

1. Upon rehearing, found that the relationship between interstate rates on cotton for city deliveries and ship-side deliveries at the Texas and Louisiana ports is unduly preferential of warehouses and compresses located on the water front at such ports, and ship-

pers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities.

2. Basis for equalizing the city-delivery and ship-side rates prescribed.
3. Regulations and practices of respondents pertaining to the concentration and compression of cotton at interior points found not to result in undue prejudice to warehouses or compresses located at the ports, or to shippers using such facilities, or to unduly prefer warehouses or compresses located at interior points, or shippers using such facilities.
4. Prior reports: In No. 14940 and No. 13991, 100 I. C. C. 169; in No. 11965, 77 I. C. C. 388.

This report also embraces No. 13991, Weatherford, Crump & Company v. Abilene & Southern Railway Company, et al, and No. 11965, Galveston Commercial Association v. Alabama & Vicksburg Railway Company.

[fol. 40] REPORT OF THE COMMISSION UPON REHEARING

MEYER, Commissioner:

In our prior report, 100 I. C. C. 159, we found that the existing adjustment of rates on cotton from Oklahoma, Arkansas, Louisiana and Texas, to the Texas port, under which the ship-side rates, exclusive of wharfage charges, are from the three States first mentioned 3 cents, and from Texas 3.5 cents per 100 pounds higher than the city-delivery rates, was unduly prejudicial to warehouses and compresses located at interior points and back-from-the-water-front at the ports and unduly preferential of warehouses and compresses located on the water front. We ordered the carriers to remove this prejudice and preference by establishing equal rates, exclusive of wharfage, for all deliveries within the usual switching limits of the Texas ports, which would include deliveries at back-from-the-water-front and water-front warehouses and compresses and deliveries at the wharves or piers. Ship-side rates we found should be made by adding wharfage charges to the rates so equalized. No complaint was made with regard to the relation-

ship of the ship-side and city-delivery rates to the Louisiana ports or Mobile, Ala., and no change was directed in the relationship of the respective rates to those ports. We said, however, that if it developed that the changes ordered at the Texas ports necessitated changes at other ports the matter of rates to such ports might be brought to our attention for further consideration. The reasonableness of the rates was not in issue and we said that the equality of treatment which we ordered in the rates to the Texas ports might be effected by readjustments which would preserve but not increase the carriers' revenues. Disagreement among interested parties as to what equalized rates would meet our suggestion as to revenue maintenance resulted in [fol. 40-a] the carriers being unable to publish new rates within the time specified in our order and its effective date was accordingly postponed. In the meantime interests at Houston had filed petitions asking that the proceedings be reopened and broadened to cover practices pertaining to the concentration and compression of cotton at interior points. It was alleged in those petitions that since the hearings upon which the original report was predicated changes had taken place in the physical arrangement of certain warehouses and compresses at the ports, and in the methods of handling cotton at those facilities, and that certain practices of the carriers at interior points were unduly preferential of interior compresses and ware houses and unduly prejudicial to warehouses and compresses at the ports. Petitions were also presented by interests at New Orleans, La., and by the Texas Farm Bureau Cotton Association asking that the proceedings be reopened. Another petition, filed by respondents, set up that compliance with our order coupled with maintenance of existing revenues was impossible unless our order in Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, was modified. In response to these various petitions the proceedings were reopened and broadened and further heard on the following questions:

(1) Whether changed conditions or conditions which existed at the time of the previous hearings but which had not been developed on the record, justify any modification of our findings and order;

(2) Whether our findings shall be extended to apply to ports other than those covered by our prior order;

(3) What rates shall be established to conform to our findings; and,

(4) What services are accorded and what charges, payments or allowances are made by respondents in connection [fol. 41] with the handling of cotton at interior points, including payments for compression, and whether any of such services, charges, payments or allowances, result, or may result, in unjust discrimination or undue preference, or otherwise violate any provision of the interstate commerce act, and what changes, if any, shall be made in such services, charges, payments or allowances.

Galveston Commercial Asso. v. A. & V. Ry. Co., supra, was also reopened and set down for hearing as to what, if any, modification should be made in the order in that case to permit of compliance with our findings herein. Extensive further hearings were held at which the various ports and interior interests and respondents have been exhaustively heard. Warehouses and compresses located back from the water front at the ports will be referred to hereinafter as uptown warehouses and compresses. Rates, charges and differences in rates and charges will be stated in cents per 100 pounds unless otherwise specified. Cotton shipping interests generally at Galveston support our previous findings relative to equalization of the ship-side and city-delivery rates, as do certain interests at Houston having uptown facilities. But the majority of the Houston interests owning or using uptown facilities, and all of the interested water-front facilities at that port, oppose our previous findings and ask that the existing basis of rates be continued in effect. Interior interests generally, including shippers, chambers of commerce, commercial and banking organizations, and warehouses and compresses, but excepting the Texas Farm Bureau Cotton Association and interests at Alexandria, La., strongly urge that the findings in our prior report as to equalization of the rates be affirmed and that the new basis be extended to the Louisiana ports. The Texas Farm Bureau Cotton Association which handles about 10 per cent of the cotton grown in [fol. 41-a] Texas, and which uses principally uptown facilities at Houston which are controlled by interests which control one of the largest water-front facilities at that

point, advocates retention of the existing basis of rates. The reasons for the position of this association will be explained later in the report. New Orleans interests are satisfied with the existing two-rate plan and urge that it be not disturbed at that point, and Alexandria interests take the same position in so far as rates in Louisiana are concerned. Mobile interests ask that any changes made at New Orleans be extended to Mobile on cotton shipped from the four States covered by the proceeding. Corpus Christi, Texas, asks for parity of treatment with Houston and Galveston.

As indicated in our prior report, similar investigations were instituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the intrastate rates in those States. When we reopened our investigation the Texas commission reopened its investigation and the further hearings were held jointly with that commission.

The genesis of the present two-rate plan and a chronicle of the events leading up to the attack which is made upon it in these proceedings are set forth in our prior report. Briefly the history of the situation is this: In Louisiana Cotton, 46 I. C. C. 451, and Galveston Commercial Asso. v. A. & V. Ry. Co., supra, we found in effect that ship-side rates on cotton to New Orleans and the Texas ports, exclusive of wharfage charges, should exceed the rates for deliveries at uptown warehouses or compresses by an amount sufficient to cover the average cost of handling the cotton from the uptown warehouses and compresses to ship side. At that time the important warehouses and compresses at the ports were all located back from the water front and the relationship there prescribed between the city-delivery and ship-side rates substantially equalized merchants at the [fol. 42] ports who drew their cotton from the interior, merchandised it at the uptown facilities and then moved it to ship side, with interior merchants who shipped their cotton direct to ship-side. This relationship between the city-delivery and ship-side rates proved generally satisfactory until water-front facilities were erected first at Galveston and later at Houston. These new water-front facilities were and are within the switching limits of the respective cities and deliveries thereat were and are made by respond-

ents at the city-delivery rates. Merchants using these water-front facilities thus gained an advantage over merchants using interior or uptown facilities, for they secured delivery of their cotton practically at ship side at the lower city-delivery rates, whereas interior merchants shipping direct to ship side were compelled to pay the higher ship-side rates, and merchants using the uptown facilities were compelled either to pay the shipside rates if transit were availed of at the port or bear the cost of getting their cotton from such facilities to ship side. Later, in order to compete with the water-front facilities, the uptown compresses were compelled to shrink their charges sufficiently to cover the cost of getting the cotton from their presses to the water-front. Thus the conditions which gave birth to the existing relationship between the ship-side and city-delivery rates were disrupted, a realignment of interest was created and the present litigation precipitated.

The further hearings disclose that some changes have taken place in the extent and physical arrangement of certain of the water-front facilities in existence at the time of the prior hearings and in the methods of handling cotton at those facilities. Essentially, however, the situation is as depicted in our prior report. At the time of the prior hearings certain of the water-front facilities at Houston were so arranged and operated that cotton was stored within 200 feet of ship's tackle, delivery within that distance of ship's tackle being considered as delivery at ship [fol. 42-a] side under the practice of the port. The present record shows that the facilities to which our prior report had reference in this connection have been enlarged and that cotton is not now stored in the space above referred to. It is now stored in warehouses immediately in the rear of this area and is handled by an overhead trolley system to ship side. It also appears that shifting of vessels from berth to berth at the same wharf is no longer practiced at Houston, but that shifting of vessels from wharf to wharf is still the rule where the cotton available for loading is of sufficient quantity to justify such shifting. At Galveston there is no shifting of vessels. The further hearings disclose that additional water-front facilities have been completed since the prior hearings and that others are about to be built.

The respective shipping interests have taken advantage of the reopening of the proceedings, according as they favor or oppose the elimination of the existing difference between the city-delivery and ship-side rates, to lay before us with infinite detail the advantages and disadvantages of the present adjustment and the readjustment found proper in our prior report. Much of what is placed before us on further hearing and argument relative to this phase of the proceeding is but repetition of facts and arguments previously presented and fully considered at the time of the adoption of our prior report. The manner in which the cotton is handled and the rates applied under the existing adjustment is set forth in our prior report and need not be repeated here. Careful consideration of the situation as developed upon the whole record convinces us of the correctness of our former findings that the existing adjustment of interstate rates on cotton to the Texas ports, from the states covered by the proceeding, gives to the [fol. 43] water-front warehouses and compresses, and shippers using such facilities, an unnatural and unlawful preference, and subjects the uptown and interior warehouses and compresses, and shippers using such facilities, to an unnatural and unlawful disadvantage to their undue prejudice.

Considering now the question of whether our previous finding was correct that the undue preference and prejudice should be removed by a readjustment which will result in the ship-side rates becoming higher than the city-delivery rates by no more than the wharfage charges: There is little, if any, more service performed in delivering shipments at the wharves and piers under the ship-side rates than is performed in delivering shipments at the water-front warehouses or compresses at the city-delivery rates. For illustration, at the water-front plant of the Houston Compress Company the wharf parallels the water front and immediately back of and paralleling the wharf are warehouses. There is a switch track on and extending the entire length of the wharf. There are also switch tracks alongside the warehouses. Cotton shipped from an interior warehouse, or ordered switched from an uptown warehouse under transit, for ship-side delivery upon the wharf at this facility would be charged ship-side rates. But upon similar cotton,

originating perhaps at the same point and handled in substantially the same manner by the carriers, delivered upon the side tracks serving the adjacent warehouses the lower city-delivery rates would be applied. In both instances the carriers would assume the cost of unloading the cotton; in the one case from the car to the wharf and in the other from the car to the receiving platform of the warehouses. Those who are striving to have us reverse our previous finding that the rates, exclusive of wharfage charges, should be equalized, contend that the carriers are put to some greater [fol. 43-a] expense in connection with the shipments delivered at ship-side because of greater free time allowances and other minor incidental services. That question was discussed in our prior report and nothing developed upon further hearing or reargument convinces us that what we there said is unsound.

Practically all of the testimony offered with regard to ports other than the Texas ports pertains to New Orleans. The situation at that port is different in certain respects from that at the Texas ports. At the time of the previous hearings the only warehouse at New Orleans so situated that cotton could be delivered from it to ship side without the intervention of railroad switching or extended drayage was the Public Cotton Warehouse which is owned by the State of Louisiana and operated as a part of the state water-front terminal facilities. This warehouse consists of several buildings immediately in the rear of the state wharves and connected with them by covered runways. Between the wharves and the warehouse buildings are sampling yards. Cotton is moved from these buildings to ship side at the adjacent wharves by small motor trucks with trailers, the distances ranging from 1,000 to 4,000 feet. To other wharves the movement is usually by railroad switching service, although drays are used for the shorter hauls to a limited extent. Since the previous hearing another warehouse has been opened adjacent to the state wharves at New Orleans by interests that own certain of the larger water-front facilities at Houston. This warehouse is so situated that cotton is conveyed from it to ship side by overhead trolley, the distances ranging from about 400 to 1,200 feet.

There are railroad tracks on the wharves adjacent to the Public Cotton Warehouse and switch tracks directly serve

the warehouse. The manner in which the respective rates [fol. 44] are applied at New Orleans is similar to that at the Texas ports. For example, cotton delivered by respondents on the tracks of the Public Cotton Warehouse is charged city-delivery rates which, with certain exceptions which will be hereinafter referred to, are 5 cents per 100 pounds less than the ship-side rates, but cotton delivered by respondents on the tracks located on the adjacent wharves is charged the higher shipside rates. The services rendered in both instances are practically the same, except that respondents assume the cost of unloading from the cars under the ship-side rates and do not under the city-delivery rates. There are a number of uptown warehouses and compresses at New Orleans and the city-delivery rates are charged on shipments delivered at these facilities. Free concentration in transit is permitted at New Orleans by lines other than the Missouri Pacific on cotton not previously concentrated at interior points and if transit is availed of ship-side rates are charged upon delivery of the cotton to the water-front. Respondents have no charge at New Orleans known as a wharfage charge, but publish a "handling" charge of 5 cents per 100 pounds, which in Handling Charges at Louisiana Ports, 61 I. C. C. 379, we found was the equivalent of the separate wharfage and handling charges at the south Atlantic ports. At the south Atlantic ports the wharfage charge on cotton is uniformly 2 cents per 100 pounds. Respondents contract with stevedores or longshoremen to unload cotton from cars at New Orleans at charges usually of 4 or 5 cents per bale, or something less than 1 cent per 100 pounds. There is also a "tollage" charge of three-quarters of a cent per 100 pounds at the state-owned wharves, but no similar charge is assessed at the railroad-owned wharves. As hereinbefore indicated, in Galveston Commercial Asso. v. A. & V. Ry. Co., supra, we prescribed reasonable relationships as between the rates on [fol. 44a] cotton from Louisiana, Arkansas and Oklahoma to New Orleans and Galveston, Houston and Texas City, Texas. In fixing the proper relationships as between these ports slight differences in terminal costs were disregarded. We are of the opinion and find that the relationships there prescribed should be maintained, except that the ship-side rates should exceed the contemporaneously maintained city-delivery rates to both New Orleans and the Texas ports

by not to exceed 2 cents per 100 pounds. To the extent necessary to permit respondents to comply with our findings herein our findings in the Galveston Commercial Asso. case are modified.

The preponderance of the cotton moving through the Texas ports originates in Texas. Of the 6,375,302 bales delivered at Houston and Galveston during the 1924-1925 shipping season 5,229,183 bales originated in Texas. The difference between the ship-side and city-delivery rates from Texas to the Texas ports, including wharfage, is 5.5 cents. From the other states embraced in the investigation to the Texas ports, and from Louisiana and Arkansas to New Orleans, the difference is generally 5 cents. For competitive reasons the carriers serving Oklahoma and northern Texas have not maintained the usual relationship between the ship-side and city-delivery rates from those states to New Orleans. From Oklahoma the ship-side rates to New Orleans generally do not exceed the city-delivery rates by more than 1.5 cents, and from northern Texas to New Orleans they are in many instances lower than the city-delivery rates. For example, from Dallas, Texas, the ship-side rate to New Orleans is 10.5 cents less than the city-delivery rate.

Respondents serving the Texas ports contend that if the shipside rates, exclusive of the wharfage charges, are to be placed on a parity with the city-delivery rates the equalization should be effected by increasing the city-delivery rates [fol. 45] 3 cents per 100 pounds and reducing the shipside rates, exclusive of wharfage, to the level of the increased city-delivery rates. The rates on cotton in Texas are blanketed for hauls in excess of 210 miles within so-called common-point territory at 80 cents for city deliveries and 85.5 cents, including wharfage, for shipside deliveries. The proposal of respondents would result in rates of 83 cents for city deliveries and 85 cents, including wharfage, for shipside deliveries.

The increase in the city-delivery rates proposed by respondents is not seriously objected to by those who support the equalization of the rates, but it is opposed by those who support the existing basis of rates. Opposition is particularly raised to the proposed increase in the city-delivery rates by the Texas Farm Bureau Cotton Association. As before indicated, this association concentrates its cotton at

an uptown warehouse at Houston and pays the city-delivery rates to such warehouse. Prior to the creation of the water-front facilities this cotton was charged 3.5 cents additional to get to shipside, but owing to the advantage enjoyed by the water-front facilities under the existing difference in the city-delivery and shipside rates, the uptown warehouses or compresses, in order to compete successfully with the water-front facilities, are now compelled to absorb the cost of switching or draying the cotton to shipside, thus enabling the association to get its cotton to shipside at the city delivery rates. In other words, the creation of the water-front facilities, coupled with the unfair relationship between the city-delivery and shipside rates, has resulted in shifting the burden of handling the cotton from the uptown facility to shipside f-om the owner of the cotton to the warehouse. Were the uptown warehouse to discontinue the practice of absorbing the cost of handling the cotton to shipside the association would be compelled to pay the [fol. 45a] higher shipside rates to get its cotton to vessels, or otherwise bear the expense. Our findings will result in reductions in the shipside rates.

The contentions of the lines serving New Orleans as to what rates are necessary to preserve their revenues are similar in effect upon the city delivery rates as those of the lines serving the Texas ports.

Respondents do not contend that the increases proposed in the city-delivery rates are necessary to preserve existing gross revenues, but they state that increases in operating expenses under an equalized basis of rates will necessitate the increases which they have suggested if their net revenues are to be preserved. Undoubtedly the expense to respondents of handling certain classes of cotton under equalized rates will be somewhat increased, and, although the reasonableness of the level of the rates is not in issue, we think that these increased expenses to respondents should not be overlooked in determining what equalized rates shall be established to conform to our findings. Concomitantly, however, consideration should be given to the fact that, generally speaking, little, if any, greater service is performed by respondents in connection with the transportation of cotton from an inland point to the water front

whether it be stopped in transit at an interior point for merchandising or at an uptown warehouse at the port. Respondents will transport cotton once stopped in transit for merchandising at an interior point to a water-front warehouse at the city-delivery rate, but if the cotton is merchandised at an uptown warehouse at the port, instead of at an interior point, and is then ordered to the water front under transit the shipside rate is charged. The services rendered are practically the same in both instances. Or, as to the latter class of shipments, the uptown ware house or compress may elect to treat the movement from the ware- [fol. 46] house or compress to the water front as a new shipment in which event a switching charge in addition to the city-delivery rate is assessed; or the uptown warehouse or compress may elect to dray the shipment to the water front at its own expense in which event only the city-delivery rate is charged. But, however handled, respondents receive more revenue from the shipment merchandised at the uptown facility than they receive from the shipment merchandised at the interior point and delivered to a water-front warehouse or compress or, what is equivalent, perform relatively less service for the same revenue. Under equalized city-delivery and shipside rates, respondents would be obligated to deliver both classes of shipments to the water front at the same rates, and it is to recoup for the loss of revenue on the class of shipments now charged shipside rates, under any reduction in such rates, and to compensate for services rendered in handling from the uptown facilities to the water front the class of shipments now delivered to such facilities at city-delivery rates, that respondents seek the basis of equalization above referred to. In this connection, however, it should be remembered that under our denial of second free concentration at the ports respondents will ordinarily not be obliged to assume the handling cost from uptown facilities to water front of cotton previously concentrated, or if they are in any case there will be an offsetting transit charge.

Upon consideration of all the facts and circumstances we are of opinion and find that, for the purposes of this case, a fair and reasonable basis for equalizing the city-delivery and shipside rates will be to increase the city-delivery rates 1 cent per 100 pounds and reduce the shipside rates, exclu-

sive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city-delivery rates. This basis of equalization should be applied from [fol. 46-a] all the states covered by the investigation to both the Texas and Louisiana ports, except that this finding should not be construed as condemning the practice of the lines serving New Orleans of maintaining that port on a parity with Galveston and Houston in the matter of export rates on cotton from Oklahoma and Northern Texas. That question is not here in issue. Furthermore, the above finding is without prejudice to further inquiry into the reasonableness of the above rates in connection with other cases now pending.

The record is not sufficiently developed to justify findings as to the rates to Mobile, Ala.

The tariffs of respondents authorize one free stopping-in-transit for concentration and this may be taken at an interior point or at the port. If a second stopping-in-transit for concentration takes place a charge of 3.5 cents per 100 pounds is assessed. As pointed out in our prior report, under the existing adjustment of rates, the warehouses at the ports secure what in effect is a second free concentration privilege. Under a one-rate plan such as herein found proper, the uptown warehouses would be deprived of this second free concentration unless the existing transit tariffs are changed. These warehouses contend that unless they are given a second free concentration they will be at a disadvantage as compared with the water-front warehouses in handling cotton previously concentrated in transit at interior points. The advantage which the water-front facility has in the handling of this class of cotton is a natural one derived from its location, and the present record will not support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port.

In our prior report we referred to the fact that in order to conserve cars for line-haul movements, and as an aid in preventing terminal congestion during periods of heavy [fol. 47] traffic, respondents make allowances to shippers who in lieu of switching dray their cotton from the uptown warehouses and compresses to shipside, and said that we saw no reason for disturbing that practice. The allow-

ances are made only on cotton which respondents are under obligation to transport to shipside under transit arrangements. The water-front facilities now contend that, if the city-delivery and shipside rates are to be equalized, respondents should be required either to discontinue the drayage allowances or make allowances for handling cotton from the water-front warehouses to shipside. Respondents ask us to determine whether such allowances may be made at the water-front facilities, and if they may be made what they should be. Upon the present record, we see no reason for condemning reasonable allowances for drayage from the uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable considering the benefit to respondents flowing from such substitute service, and must not be used as a cloak for unlawful preference to shippers furnishing such substitute service. Not all of the cotton handled by the water-front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water-front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging where barging is used as a substitute for switching. But upon cotton delivered to shipside from and by water-front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water-[fol. 47-a] front facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior or an uptown warehouse to the railroad car or dray is an intra-plant movement. No allowances may lawfully be made for these intraplant movements.

Concentration and Compression at Interior Points

Texas, Oklahoma, Arkansas and Louisiana comprise the most important cotton-producing area of the United States.

Of the 16,086,000 bales produced in the United States in 1925, these States produced 9,369,000 bales, of which 4,165,000 were grown in Texas, 1,691,000 in Oklahoma, 1,603,000 in Arkansas and 910,000 in Louisiana. Cotton is the most important agricultural commodity produced in these States, the average income from the crop for the three years ending with 1925 being 72 per cent in Texas, 48 per cent in Oklahoma, 69 per cent in Ar*ak*nsas, and 46 per cent in Louisiana of the total income from the products of farms, including livestock. While the cotton production of these States has generally increased for many years, it has varied considerably in different sections due, among other things, to droughts and the ravages of the boll weevil. For example, the production in 1925 in Central Texas, one of the principal cotton-growing sections of that State, was 535,000 bales, while in 1924, and 1923, it was 1,260,000 and 1,300,000 respectively.

The harvesting of cotton in these States generally extends over the months of August to December, inclusive, and about 70 per cent is sold during these months. The rail movement is heaviest during the last three and the first two months of each year, as is likewise the exportation.

[fol. 48] Cotton, after being harvested, is ginned and usually sold by the producer at practically every local station in the cotton-producing section. The buyers assemble or concentrate it at points best suited for the particular merchant's convenience, where facilities are maintained for its merchandising and storage. Merchandising includes grading and arranging in lots of even running grade and staple, sampling and resampling, tagging, marking, patching, reconditioning, rebaling and assembling in shipment lots. It is usually sold by the cotton merchants in multiples of 100 bales of even grade and staple and in order to assemble lots of that size it is necessary to concentrate it. In former years cotton was principally concentrated at a few interior points, such as St. Louis, Mo., and Memphis, Tenn., and at the ports, including New Orleans and Galveston. It was then shipped by the farmer producer, or interior general merchant who frequently financed the growers, to commission merchants or cotton factors at the large markets where it was sold. After the many expenses incident to transportation and merchandising had been de-

ducted, little proceeds were left for the grower. Now the producer usually sells his cotton at his nearest local station, where buyers compete for its purchase, and the producer knows at the time it leaves his hands the price he is to receive. As the interior concentration points increased in number, the facilities for handling the crop, particularly those for storage, greatly improved. It is represented by experienced cotton producers, cotton merchants, and bankers that the concentration of cotton at interior points has been helpful to the growers, merchants handling cotton or general merchandise, and banking institutions, has created many important cotton markets and has promoted the general prosperity of the cotton-producing territory. Concentration has been also of substantial advantage to the carriers as it increases the car loading beyond the transit points, conserves equipment when it is [fol. 48-a] in greatest demand, and thus promotes economy of operation.

At practically all interior concentration points there are located compresses where the ginned bales, with a density of about 11 or 12 pounds per cubic foot, are compressed to a density of about 22.5 pounds per cubic foot. High density compresses are also located at a few interior points where the bales are compressed to a density of about 32 pounds per cubic foot. While the cotton is being transported from the country station to the first billed destination, it is usually stopped at a compress point, in practically all instances the first one reached in route of movement, and compressed. The charge for compression throughout this territory is 18 cents per 100 pounds. This compress charge is absorbed by the rail carrier, except on short-haul traffic where the net rates for transportation would be less than amounts stated in the tariffs, and the compression charge is not absorbed when the rate is 55 cents or less. The rates on flat cotton are, with the exception of those applying intrastate in Texas, 12 cents higher than on cotton compressed by the carriers in transit. The rates on cotton, compressed before delivery to the carriers, are 18 cents less than on cotton compressed at the carrier's expense. On interstate traffic shippers may direct that the cotton be moved flat or that it be compressed in transit, but the carriers reserve the right to determine

the point where the compression shall be had when they bear the expense, and if the shipper requires that the cotton be compressed at a point beyond the first compress in route of movement, the carriers charge the rates applying on flat cotton, and the shipper bears the cost of compression. Intrastate in Texas, the same rates generally apply on flat and compressed cotton, and no penalty is incurred for moving flat cotton past a compress point.

[fol. 49] As previously stated the carriers in this territory, with few exceptions, authorize one concentration in transit without charge. The services rendered by the carriers in the concentration of cotton are generally the same as on other traffic accorded transit. The inbound shipments are switched to the warehouse or compress, notice of arrival is given and inbound freight charges are collected. When the shipments are forwarded to final destination the outbound rates are collected, but subsequently the total charges are adjusted to the basis of the through rates from origins to destinations, plus other charges such as for out-of-line or back-haul services. The services of the carrier in handling cotton for compression are substantially the same as for concentration in so far as the movement into and out of the concentration or compress points is concerned, but, when the cotton is compressed, the compress companies are required to unload and load the cars. When cotton is concentrated at the point where the carrier compresses it, the service rendered by the carrier is materially less than where concentration and compression take place at different points. If the cotton is not concentrated at the compress point, the compression is usually promptly effected and the carload shipments forwarded to the concentration or destination point. If it is concentrated at the compress point, the charges for concentration or merchandising are borne by the shipper and the charge for compression by the carrier. In many instances some of the services of concentration or merchandising for the shipper are performed by the compress company during the time the compression is being effected.

Compression of cotton was first inaugurated at the ports, primarily in the interest of increasing the loading of ships. The charges for such compression at that time were either paid by the water carrier or the rates on such cotton were

[fol. 49a] made sufficiently lower than on gin baled or flat cotton to warrant compression by the shipper. Subsequently, the rail carriers recognized that it was more economical to handle compressed than flat cotton and compresses were located at interior points. In the beginning, the interior compresses were either operated or controlled by the railroads; in some instances they were owned by the railroads and in others by railroad officials. Ultimately, the ownership of the compresses changed and it is testified that those in this territory are now operated by interests in no way associated with or controlled by the railroads or their officials.

The earliest charges for compression at interior points ranged from 10 to 15 cents per 100 pounds and such charges were paid or absorbed by the carriers either directly or through differences in rates. For many years prior to December 1, 1918, the charge for compression in this territory was 10 cents; it was increased on that date under Freight Rate Authority No. 2935 dated November 30, 1918, to 15 cents, on August 26, 1920, to 20 cents, and reduced to 18 cents, the present charge, on July 1, 1922. The compress charges long have been and are now considered as integral parts of the rates on cotton compressed in transit. Under the general increases of June 25, 1918, the rates on cotton were increased 15 cents, which had the effect of increasing the gross rates less wharfage charges of the carriers from Texas common points to the Texas ports for export 28 per cent. In other words, the component of 10 cents for compression, became 12.8 cents, but the entire increase accrued to the carriers until December 1, 1918, when the allowance for compression was increased to 15 cents. This increase in the allowance from 10 to 15 cents was made by the Director General, under whose control the railroads were being operated, upon the recommendation of the Price Fixing Committee of the War Industries Board, and the [fol. 50] Federal Trade Commission, which latter body, at the request of the former, had made an investigation in 1918 of the allowances to and services performed by cotton compress companies. Contemporaneously with the increase in such allowance, the services performed by the compress companies were materially increased. Under the 10-cent allowance, they only unloaded the cotton, compressed it,

marked it on one side, and reloaded it in car lots. If cotton was topped or tiered in loading, additional charges were assessed by the compress companies against the carriers. Under the 15-cent allowance the compress companies were required, among other things, to mark the bales on two sides, insure the cotton while in their possession, load as nearly as possible to 75 bales per car, which necessitated tiering or top loading, and also load so-called city cotton, which for the three years ended with 1925 was about 27 per cent of the total compressed in Texas. The additional services performed by the compress companies under the increased allowance are estimated by a compress operator of many years experience to cost the compress companies from 9 to 12 cents per bale.

The port interests contend that the allowance made by the carriers for compressing the cotton in transit is excessive and should not exceed 60 or 75 cents per bale; that many interior cotton merchants and shippers are stockholders in the interior compress companies, and that the profits from the compression allowance gives to such interior stockholders, merchants and shippers an unreasonable and unlawful advantage over port merchants and shippers and compress companies. They also contend that by reason of the excessive allowances made by the carriers to the interior compress companies, such compress companies can and do render services in connection with concentration of cotton, either free or at less than would be reasonable [fol. 50a] charges, to the prejudice of the merchants and compress companies at the ports.

The interior compress companies are neither owners of nor dealers in cotton. Some interior cotton merchants and also some of the protesting port merchants are stockholders in a number of the interior compress companies. It is not shown, however, that any shipper, whether a stockholder in interior compress companies or not, secures or can secure from such compress companies any favor or advantage in the handling of cotton over any other shipper of cotton handled through the same compresses. The stockholder shipper cannot designate the compress in which he owns stock as the one at which his cotton is to be compressed at the carriers' expense. The right to select the compress rests entirely with the carriers, and it is not suggested here

that any carrier has exercised such right to the advantage or disadvantage of any shipper or compress company. As before stated, if a shipper directs that his cotton be compressed at a point beyond the first compress point in route, rates 12 cents higher than on cotton compressed in transit are assessed and the shipper is also required to bear the charges of compression. It is neither shown nor suggested that any shipper or class of shippers whether stockholders in the interior compress companies or not, are given preferential treatment or service by any interior compress company at times of congestion or scarcity of cars at the compresses. During the three seasons ended with 1924-25, 76 compresses in Texas compressed 9,392,024 bales for the carriers and but 13 per cent of that cotton was owned by stockholders in such compresses and less than one-half of the stockholders' compressed cotton was concentrated at such facilities.

Certain port interests assert that some of the interior compress companies render services in connection with con- [fol. 51] centrated cotton without charge and thereby induce shippers to utilize their facilities to the exclusion of other facilities, including those at the ports. As the interior facilities are owned by many different interests, it cannot be expected that their charges for the various services in connection with the concentration of cotton will be uniform. One of the instances particularly cited by certain port interests in support of their contentions is that a compress company at Greenville, Texas, performs certain merchandising services free. This compress company offers to perform particular services, such as handling, sampling, tagging and marking, for 25 cents per bale, or free at the option of the shipper if the compress company is allowed to retain the loose cotton produced by such operation. Such compress, however, charges 30 cents per bale for "handling" railroad concentrated cotton, and it is believed that some of the particular services of "handling, sampling, tagging and marking" are usually rendered in connection with "handling" railroad concentrated cotton.

The cotton-shipping interests at the ports do not concentrate in transit as large a percentage of their cotton as do the merchants at the interior, and such port interests argue that their rates or total charges should be less than those

paid by the shippers who concentrate most of their cotton in transit. They also argue that as concentration is a valuable service the shippers utilizing it should pay a charge therefor separate from the rate for transportation. The port merchants may and do, under the same general transit provision applying at interior points, concentrate cotton at the ports and ship it to other ports or to interior consuming points at the through rates, but apparently they are willing to forego transit on such traffic if the charges to the interior concentrator can be increased. They show that a charge for [fol. 51a] first concentration is made by the St. Louis-San Francisco and St. Louis-Southwestern in Arkansas, and that such charges of the former were approved by us in Compression, Concentration and Storage of Cotton, 91 I. C. C. 472. The approval of the concentration charge in that case, however, was upon a definite state of facts peculiar to the issues there under consideration which are substantially different from those in this case, and that decision is not controlling here.

The rates and charges of a railroad cannot be based entirely on the cost for each particular character of service rendered. If such was the case, the passenger with baggage would pay more than the passenger without baggage, and the rates to large industrial centers would vary dependent upon the character of terminal service employed, including connecting line switching. Cost of service is an important element but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service. Furthermore, under the theory of the port interests there should be a lower rate on city cotton, because it usually is not concentrated in transit by the carriers, than upon other cotton that is concentrated in transit. Concentration in transit, like compression in transit, unquestionably reduces rather than increases the carriers' expenses of transportation. When concentration takes place at a compression point, there are scarcely any transportation services rendered by the carriers in addition to those rendered in connection with stopping cotton for compression. Interior concentration is an important factor in regulating an even flow of traffic, and may be likened somewhat to a series of reservoirs in supplying an even flow of water for irrigation or other purposes. Without interior concentra-

tion, the cotton crop would have to be shipped during the gathering season which is also the grain-moving season, and [fol. 52] the resultant car shortage in the interior, and congestion at the ports, particularly at the mixed shipment platforms, might seriously disrupt transportation and general business activities throughout the entire cotton-producing section.

In the assembling of cotton at the interior compresses where concentration is authorized, the carriers can and do use many cars otherwise unfit for service. Ordinarily, the length of haul from the originating points to the compress and concentration points is relatively short, and during the peak of the movement the carriers use cattle cars, bad order box cars with leaky roofs, flat cars and sometimes open equipment which could not be used for hauls to the ports or distant destinations.

It does not appear that the giving of free first concentration has operated to the preference or prejudice of any shipper or concentrator of cotton. The record is clear, however, that since the so-called two-rate plan was established, the percentage of cotton concentrated at the interior points of the total handled at such points has steadily decreased, and that certain interior merchants, some of whom have interests, through stock ownership, in interior compress companies, have discontinued concentrating their cotton at points where such compress companies operate facilities and now concentrate it at the ports where they can take advantage of the lower city-delivery rates under which they obtain water-front delivery.

Due to many conditions, such as drought, boll weevil and acreage planted, the production of cotton in territory contiguous to particular compresses is not sufficiently uniform to enable them to operate regularly even during the heaviest [fol. 52-a] portion of the harvest. Intermittent operation unquestionably tends to increase costs.

The interior interests at the request of the port interests submitted considerable data with respect to the cost of operating interior compresses throughout this territory. The average cost per bale for compressing cotton at 115 representative compresses during the three seasons ended with 1924-25, according to these studies, was 72.5 cents for 69 compresses in Texas, 73.6 cents for 15 compresses in Okla-

homa, 90.2 cents for 26 compresses in Arkansas, and 92.6 cents for 5 compresses in Louisiana, the average cost for all during the three seasons being 78.5 cents. The costs varied greatly at the different points. For example, the lowest average cost shown was 55.2 cents at Lubbock, Texas, where an average of about 83,500 bales per annum were compressed, and the highest was $1.80 at Sallisaw, Okla., where an average of 8,423 bales per annum were compressed. In compiling these average costs the interior interests charged against compression all items of expense that would be incurred by the carriers if they performed the compression. The port interests contend that as concentration services are performed at all compress points, certain items of expense charged to compression should be charged to concentration or divided between such services. For example, they argue that the labor costs incident to loading and unloading the cotton should be divided between compression and concentration on the basis of the percentage relationship of the cotton compresses and cotton concentrated to the total handled, which in Texas was 34 per cent concentrated and 66 per cent compressed. In further support of their contention that the allowance for compression is excessive, the port interests show that their average cost of compression at the ports for representative periods was [fol. 53] 51.6 cents per bale. The port compresses charge shippers 60 cents per bale for standard compression and 75 cents per bale for high density compression. The compresses at the ports compress some cotton for the carriers and are given the same allowance as the interior compresses. The substantially lower unit cost of compression at the ports is due part to the fact that the individual compresses at the ports handle on an average many times as much cotton as is ordinarily handled by an individual compress in the interior, and the port facilities undoubtedly operate more regularly and for longer periods than the interior compresses. The interior compresses are required to stand ready at all times, subject to certain limitations not important here, to handle such cotton as the carriers offer for compression.

The port interests state that a proper compression allowance could not be determined from this record, but they contend that the present allowance is excessive. They do

not urge that different compression allowances be made in the different states or at the various compress points in the same state, and there is grave doubt whether it would be practicable or expedient for the carriers to make different allowances at different points, or for one carrier to make an allowance different from that made by other carriers. While the compress allowance was increased 50 per cent December 1, 1918, and such increase appears to be of great concern to certain port interests, the services performed by the compress companies were materially increased at that time. It does not appear that the present compress allowance bears an unreasonable relation to the present freight rates as compared with their relationship prior to June 25, 1918. In view of the small and varying amounts of cotton compressed for the carriers by certain interior compresses, there is little doubt but that, were it not for [fol. 53-a] the fact that such compresses are able to obtain some revenue from concentration, their compress charges would be substantially higher than the allowance now made by the carriers. The record is clear that the cost of compression varies with the amount of cotton compressed and this, to a great extent, accounts for the fact that the port facilities are able to compress cotton for about 60 cents per bale while the interior facilities charge about 90 cents per bale. While the record is not specific as to all the elements of cost of compression at the port facilities, it appears that at least some of such facilities have not included in such costs anything for unloading the cotton from cars and reloading it in cars. This is an important item of cost in the operation of the interior compresses.

The port interests argue, and make an effort to demonstrate by certain cost calculations, that it would be less expensive for the carriers to transport cotton uncompressed than to stop it for compression and bear the cost thereof where the hauls are 325 miles and less. There might be merit in this contention and force in the argument if the final destination of the cotton was always known to the carrier at the time it was offered for transportation. The carriers do not, and cannot, know the final and ultimate destination of the cotton when it is first offered. The longer the haul on flat cotton the more expensive the movement. Therefore, it would be less economical for the carriers to

move the cotton past interior compresses to the port facilities for compression, if it is to be forwarded to some other port for export or to eastern consuming points. New Orleans cotton interests presented this identical question to us in Louisiana Cotton, 46 I. C. C. 451, where at page 454, we said:

The peculiar position of certain short distance points ought not to control the adjustment of rates over a large territory such as here considered, particularly where, as here, most of the cotton moves more than 120 miles.
[fol. 54] The average haul of cotton from Texas to the Texas ports is something over 325 miles, and it is estimated by certain interests that the average haul from this territory to all destinations is approximately 570 miles.

Upon this record we find that the carriers are justified in giving one concentration in transit on cotton without charge and that such concentration without charge does not unduly prefer or unjustly discriminate against any shipper or class of shippers or any compress or warehouse company. We further find that the present allowance for compressing cotton in transit is not shown to be unreasonably high or unjustly discriminatory against or unduly preferential of any shipper or class of shippers or any compress or warehouse company.

An appropriate order will be entered.

HALL, Commissioner, dissenting in part:

For reasons sufficiently indicated in my dissent from the former report, 100 I. C. C. 159, I am unable to join in the conclusions of the majority as to the relation of city-delivery and shipside rates. I concur in the conclusions as to the regulations and practices of respondents pertaining to the concentration and compression of cotton at interior points.

[fol. 54-a] At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 4th Day of April, A. D. 1927

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

Weatherford Crump & Company

v.

Abilene & Southern Railway Company et al.

No. 11965

Galveston Commercial Association, Galveston Cotton Exchange and Board of Trade, and Houston Cotton Exchange and Board of Trade

v.

Alabama & Vicksburg Railway Company et al.

Order

It appearing, That on February 2, 1923, the Commission entered its report and order in No. 11965 and on June 23, 1925, entered its report and order in Nos. 14940 and 13991;

It further appearing, That by order dated December 28, 1925, the Commission reopened the above-entitled proceedings for further hearing;

It further appearing, That full investigation of the matters and things involved has been had and that the Commission has, on the date hereof, made and filed a report on rehearing containing its findings of fact and conclusions thereon, which said report and the reports and orders of February 2, 1923, and June 23, 1925, are hereby referred to and made a part hereof;

[fol. 55] And it further appearing, That the Commission has found in said report on rehearing that the relationship between interstate rates on cotton from points on the lines of respondents and above-named defendants in Oklahoma, Arkansas, Texas, and Louisiana (on and west of the west

bank of the Mississippi River) for city deliveries and shipside deliveries at Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas, and New Orleans, La., including sub-ports of any of said ports, is unduly preferential of warehouses and compresses located on the water front at such ports, and shippers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities, and that the undue prejudice and preference should be removed by increasing the present city-delivery rates 1 cent per 100 pounds and reducing the shipside rates, exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city delivery rates;

It is ordered, That the said orders of February 2, 1923, in No. 11965, and of June 23, 1925, in Nos. 14940 and 13991 be, and they are hereby, modified to the extent necessary to permit of the readjustment of said rates in the manner indicated in said report.

It is further ordered, That respondents in No. 14940, named in appendix hereto, be, and they are hereby, notified and required to cease and desist, on or before June 16, 1927, and thereafter to abstain, from practicing the undue prejudice and preference found in said report to exist.

It is further ordered, That said respondents be, and they are hereby notified and required to establish, on or before June 16, 1927, upon notice to this Commission and to the general public by not less than 10 days' filing and posting [fol. 55-a] in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, in the manner indicated in said report, export and interstate domestic rates, charges, regulations, and practices, which will remove the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF COURT CALLING TO HIS ASSISTANCE A CIRCUIT JUDGE AND A DISTRICT JUDGE—Filed July 2, 1927

Upon consideration of the bill of complaint filed herein wherein an injunction is sought to enjoin, set aside, suspend and annul an order under date of April 4, 1927, in I. C. C. Dockets Nos. 14940 and 13991 of the Interstate Commerce Commission, a commission existing by virtue of an Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce" and the Acts Amendatory thereof and supplementary thereto.

It appearing to the Court that the subject matter involved herein comes within the purview of the Act of Congress of October 22, 1913, Chapter 32, entitled: "An Act making Appropriations to Supply Urgent Deficiencies in Appropriations for the Fiscal Year 1913 and for other purposes," U. S. Compiled Statutes Section 998—wherein it is provided that matters of this nature be heard and determined by three Federal Judges of whom at least one shall be a Circuit Judge.

Now, therefore, I do hereby call to my assistance to hear and determine the application of complainants herein, the Hon. Rufus E. Foster, Circuit Judge and the Honorable Louis H. Burns, District Judge.

J. C. Hutcheson, Jr., Judge U. S. District Court, Southern District of Texas.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

RULE TO SHOW CAUSE—Issued July 2, 1927; Filed July, 9, 1927

The President of the United States of America to United States of America, Greeting:

Whereas on July 1, 1927, an Original Bill of Complaint was filed by Alexander Sprunt & Son, Inc., et al. in the above-entitled and numbered cause, and

Whereas an order was made on said Original Bill of Complaint on July 2, 1927 by the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas, in words and figures as follows:

"7/2/27.

Ordered that rule issue to defendants to appear before the legally constituted court at New Orleans, La., consisting of 3 Judges on Tuesday, July 12th at 10:30 A. M. to show cause why the restraining order and/or the temporary injunction prayed for should not issue.

J. C. Hutcheson, Jr., Judge."

Wherefore you are hereby commanded to appear before said legally constituted Court at New Orleans La., consisting of 3 Judges, on Tuesday July 12, at 10:30 A. M. to show cause why the restraining order and/or the temporary injunction prayed for should not issue.

Herein fail not.

Witness the Honorable J. C. Hutcheson, Jr., Judge of said Court and the Seal of the District Court of the United States for the Southern District of Texas, at Houston, this 2nd day of July A. D. 1927.

L. C. Masterson, Clerk, by S. F. Cunningham, Deputy.
(Seal.)

[File endorsement omitted.]

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR PERMISSION TO INTERVENE—Arkansas Cotton Trade Association et al.; filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

These petitioners, Arkansas Cotton Trade Association, a corporation under the laws of Arkansas, engaged as a trading association of cotton dealers in the State of Arkansas, of which H. M. Bennett is President and W. S.

Turner is Secretary and Treasurer, H. M. Bennett being a resident of the County of Pulaski, State of Arkansas; and the Texas-Oklahoma Compress Association, an association composed of cotton compresses and warehouses in the States of Texas and Oklahoma, of which C. H. Thompson, of Lamar County, Texas is President, complaining of Alexander, Sprunt & Son, Inc., Anderson, Clayton & Company, a joint stock association; Houston Compress Company, a Texas corporation with its principal office and place of business in Harris County, Texas; Ship Channel Compress Company, a corporation with its principal office and place of business in Harris County, Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of the State of Texas, with its principal office and place of business at Dallas, Dallas County, Texas; Turning Basin Compress Company a corporation with its principal office and place of business at Houston, Harris County, Texas; and Weatherford Crump & Company, a Texas corporation with its principal office and place of business at Houston, Harris County, Texas; plaintiffs in the above cause, would show unto your Honors that [fol. 59] the plaintiffs did on the 1st day of July A. D. 1927, file their bill in this cause wherein they complained of an order of the Interstate Commerce Commission, issued April 4th, 1927, in Cause No. 14940, before the said Interstate Commerce Commission by virtue of which order said Interstate Commerce Commission found that discrimination and undue preference existed in the freight rate adjustment of cotton to Gulf Ports in the States of Texas and Louisiana, and by virtue of which order the said discrimination was removed.

That on the — day of July A. D. 1927, the defendant The United States of America, filed its answer in this cause; that your petitioners herein claim and assert an interest in this litigation in that if the relief prayed for by the plaintiffs herein, should be granted, there would be an unreasonable and undue delay in the receiving by these petitioners of the relief and benefit to which they are entitled by virtue of the said order of the said Interstate Commerce Commission, which would result in an undue preference and undue discrimination as against these petitioners in favor of the plaintiffs herein with regard to freight rates on cotton

from points in Texas, Oklahoma, Arkansas and Louisiana to the gulf ports in Texas and Louisiana.

Your petitioners show that by virtue of the said order of the said Interstate Commerce Commission above referred to, the undue discrimination and undue preferences which existed as against them in favor of the plaintiffs herein were removed and that in the event said order is suspended or its enforcement enjoined, that these petitioners will be subjected to the enforcement of freight rates on cotton, from points in Texas, Louisiana, Oklahoma and Arkansas to Gulf Ports in Texas and Louisiana, which will be highly discriminatory and preferential as against these petitioners and in favor of plaintiffs in this cause to the great detriment and damage of these intervenors.

Wherefore your petitioners pray the most gracious permission of this Honorable Court, that they be allowed to file an intervention in this cause and that the above mentioned order of the Interstate Commerce Commission be in no way interfered with, set aside, annulled, suspended [fol. 60] or its enforcement in any way affected by this Honorable Court. Your petitioners further — for such other and further relief as may be proper in the premises.

A. L. Reed, Solicitor for Petitioners.

Address: Callaway & Reed, 1908 Santa Fe Building, Dallas, Texas.

[File endorsement omitted.]

[fol. 61] In United States District Court

[Title omitted]

Application of Oklahoma State Cotton Exchange for Leave to Intervene—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

This petitioner, Oklahoma State Cotton Exchange, a corporation organized and existing under and by virtue of the laws of the state of Oklahoma, with its domicile in the State of Oklahoma, complaining of Alexander, Sprunt & Son,

Inc.; Anderson, Clayton & Company, a joint stock association; Houston Compress Company a Texas corporation with its principal office and place of business in Harris County Texas; Ship Channel Compress Company, a corporation with its principal office and place of business in Harris County, Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of the State of Texas, with its principal office and place of business at Dallas, Dallas County, Texas; Turning Basin Compress Company, a corporation with its principal office and place of business at Houston, Harris County, Texas, and Weatherford Crump & Company, a Texas corporation with its principal office and place of business at Houston Harris County, Texas; plaintiffs in the above cause, would respectfully show unto your Honors that the plaintiffs did, on the 1st day of July A. D. 1927, file their bill of complaint in this cause wherein they complained of an order of the Interstate Commerce Commission, issued April 4th 1927, in Cause No. 14940, before the [fol. 62] said Interstate Commerce Commission by virtue of which order said Interstate Commerce Commission found that discrimination and undue preference existed in the freight rate adjustment on cotton from Oklahoma and other states to Gulf Ports in the States of Texas and Louisiana and by virtue of which order the said discrimination was removed, as more fully appears from the order of the Commission and referred to in Bill of Complaint filed by the plaintiffs in this cause; that on the — day of July A. D. 1927, the defendant, the United States of America filed its answer in this cause; that your petitioner herein claims and asserts an interest in this litigation in that, if the relief prayed for by the plaintiffs herein should be granted, this petitioner and its members would be deprived of the relief and benefit to which it and its members are entitled by virtue of the said order of the said Interstate Commerce Commission, and the delay would result in an undue preference and undue discrimination as against this petitioner and its members in favor of certain cotton shippers and warehouses at the gulf ports in the States of Texas and Louisiana with regard to freight rates on cotton from points in Oklahoma, Texas, Arkansas and Louisiana to the gulf ports in Texas and Louisiana.

Your petitioner shows that by virtue of the said order of the said Interstate Commerce Commission above referred to, the undue discrimination and undue preference which existed as against them in favor of such other cotton shippers and warehouses at the gulf ports in the states of Texas and Louisiana were removed and that in the event said order is suspended or its enforcement enjoined, that this petitioner will be subjected to the enforcement of freight rates on cotton from points in Oklahoma, Texas, Arkansas, and Louisiana, which will be highly discriminatory and preferential as against this petitioner and in favor of such other cotton shippers and warehouses at the gulf ports in Texas and Louisiana.

Wherefore your petitioner prays the most gracious permission of this Honorable Court, that it be allowed to file an Intervention in this cause and that the above mentioned order of the Interstate Commerce Commission be [fol. 63] in no way interfered with, set aside, annulled, suspended or its enforcement in any way affected by this Honorable Court. Your petitioner further prays for such other and further relief as may be proper in the premises.

Charles B. Cochran, Solicitor for Petitioner, Oklahoma State Cotton Exchange.

[File endorsement omitted.]

[fols. 64 & 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING PERMISSION TO ARKANSAS COTTON TRADE ASSOCIATION, TEXAS-OKLAHOMA COMPRESS ASSOCIATION, AND OKLA. STATE COTTON EXCHANGE TO INTERVENE—Filed July 11, 1927

This cause coming on to be heard on the application of Arkansas Cotton Trade Association, Texas Compress Association and the Oklahoma State Cotton Exchange, intervenors in this cause, to be made parties defendant, and the petition having been duly considered and it appearing to the court that the said petitioners were parties of record

before the Interstate Commerce Commission in the cause before said commission involving the matter now before this court, and that said petitioners are interested in the cause now pending in this court, and that the rights of said petitioners will be affected by the matter or matters involved in this cause;

It is therefore ordered, adjudged, and decreed that said Arkansas Cotton Trade Association, Texas Compress Association and the Oklahoma State Cotton Exchange, petitioners have leave to intervene in said cause and to that end may appear in said cause within one day from the date of this order in the same manner and with like effect as if named in the original bill as parties defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

J. C. Hutcheson, Jr., Judge.

[File endorsement omitted.]

[fol. 66] In United States District Court

[Title omitted]

Petition in Intervention of Arkansas Cotton Trade Association and Texas Oklahoma Compress Association—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Now come Arkansas Cotton Trade Association, a Corporation organized under the laws of the State of Arkansas and engaged as a trading association of cotton dealers in the state of Arkansas, of which H. M. Bennett is president, and W. S. Turner is secretary and treasurer, H. M. Bennett being a resident of the County of Pulaski, State of Arkansas, and W. S. Turner being a resident of the County of Pulaski, State of Arkansas, and the Texas-Oklahoma Compress Association an association composed of cotton compresses and warehouses in the states of Texas and Oklahoma, of which C. H. Thompson of Lamar County, Texas, is president, and with leave of this Honorable Court

first being had and obtained, and with the permission of this Honorable Court, file this their petition of intervention, complaining of Alexander Sprunt & Son, in*d*., Anderson Clayton & Company; Houston Compress Company; Ship Channel Compress Company; Texas Farm Bureau Cotton Association; Turning Basin Compress Company; and Weatherford Crump & Company plaintiffs in the above cause; and would respectfully show unto this Honorable Court as follows:

I

That heretofore towit, on or about the 1st day of July A. D. 1927 there was filed in this Honorable Court against the United States of America by the parties hereinabove mentioned that certain complaint entitled Alexander, Sprunt & Son, Inc., et al. versus United States of America, wherein the plaintiffs complained of an order of the In-
[fol. 67] terstate Commerce Commission issued April 4th, A. D. 1927, in cause No. 14940 by the Interstate Commerce Commission, by virtue of which order said Interstate Commerce Commission found that a discrimination and undue preference existed in the freight rate adjustment on cotton to Gulf Ports in the States of Texas and Louisiana, and by virtue of which order the said discrimination and undue preference was removed;

II

Your petitioners further show that said order grew out of an investigation made by the Interstate Commerce Commission with regard to the freight rates on cotton from interior points in the states of Texas, Arkansas, Oklahoma and Louisiana to Gulf ports in the States of Texas and Louisiana and that to such hearing or hearings these petitioners were parties as well as approximately two hundred and twenty-six other parties consisting of municipalities, corporations, firms and individuals in the states of Texas, Arkansas, Oklahoma and Louisiana, and that all of such parties had a material interest in such investigation and in any orders that might be issued by the Interstate Commerce Commission as a result thereof, for the reason that an unjust discrimination and preference existed in favor

of the plaintiffs in the original Bill of Complaint in this cause as against your petitioners in this intervention, whereby the unjust and preferential freight rates were enjoyed by such plaintiffs as against your petitioners herein;

III

Your petitioners further respectfully show that the order of the Interstate Commerce Commission hereinabove mentioned was issued by said Commission after proper hearing and after lengthy investigation and the persentation to said Commission of a great mass of evidence with regard to the matters involved in the investigation, at which hearing and hearings the plaintiffs in this cause were given full opportunity properly to present their cause and to protect their interests; and your petitioners further show that said order was a legal, proper and just order is- [fol. 68] sued under the proper authority of the said Interstate Commerce Commission.

III-A

Petitioners neither admit or deny paragraphs I to VI, inclusive, of plaintiff's bill of complaint, but assert that the document, pleadings and orders referred to therein are the best evidence as to the issues and requirements thereof.

III-B

Petitioners deny in its entirety plaintiff's allegations in paragraph VII that there are additional services rendered on export traffic not required on local or domestic traffic. Petitioners deny statements and allegations in paragraph VII of plaintiff's bill that the re-opened case did not take into consideration, in addition to the question of discrimination and preference, the question of what rate was necessary to remove said discrimination and preference, but assert that the Commission did undertake in said investigation in a lawful and proper manner to determine what rate was necessary to remove the unjust discrimination and undue preference and advantage previously found to exist. Petitioners neither admit nor deny the other statements contained in paragraph VII of plaintiffs' bill with

regard to the various pleadings before the Commission, decisions of the Commission and the various orders and notices issued by the Commission.

Petitioners assert that these pleadings, decisions, orders and notices are the best evidence of their contents.

III-C

Petitioners deny that the handling by the carriers of export cotton and shipside delivery cotton involves any greater service on the part of the transportation lines than said service rendered by said transportation lines in the handling of domestic cotton to shipside facilities (as alleged in paragraph VII of plaintiff's bill).

Petitioners assert that the undisputed testimony of record before the Commission shows that in truth and in fact the transportation service rendered by the carriers and the cost of handling cotton for export and shipside delivery is materially less than the cost of handling domestic cot-
[fol. 69] ton to shipside facilities located at the various gulf ports in Louisiana and Texas. Petitioners assert that regardless of this undisputed testimony the record further shows that the carriers are exacting and collecting higher rates on the export cotton and shipside delivery cotton than on the domestic cotton delivered to shipside facilities.

Petitioners further assert that there is no warrant in fact or in truth for the allegation contained in paragraph VII, page 20 of plaintiffs' bill to the effect that the undisputed testimony shows that additional transportation services and transportation services of a different character are rendered on shipments of export cotton. Petitioners further assert that in fact and in truth the transportation services rendered are of an identical character, but are substantially less on export and shipside cotton than on domestic cotton delivered to shipside facilities.

All allegations in paragraph VII, pages 21, 22, 23, and 24 of plaintiffs bill are denied in their entirety as being a correct statement as to the facts in connection with the handling of cotton at the various facilities located at the various gulf ports in Texas and Louisiana.

III-D

Petitioners deny in its entirety all allegations contained in paragraph XI of plaintiff's bill. Petitioners deny that the Commission refused and denied the benefit of a transit privilege to plaintiffs. On the contrary petitioners assert that the Commission's order on its face shows that these plaintiffs have been accorded the same transit privileges as are accorded all other cotton shippers.

Petitioners deny that plaintiffs have not been accorded a full and complete hearing, and that the Commission's orders were in any way made without competent evidence. Petitioners assert that plaintiffs have been accorded every opportunity to present facts to the Commission and that the Commission's findings and orders are based upon a comprehensive and complete record.

III-E

Petitioners deny all allegations contained in paragraph [fol. 70] XII of plaintiffs' bill and assert that the carriers who were defendants or respondents in the cause before the Commission did not introduce evidence which in any manner showed or appeared to show that export shipments of cotton involved additional and different services from those rendered on local and domestic shipments of cotton delivered to shipside facilities. Petitioners assert that the carriers' evidence showed and established quite the contrary.

III-F

Petitioners assert that the allegation contained in paragraph XIII of plaintiffs' bill are incorrect and petitioners deny each and every allegation therein contained. Petitioners assert that the Commission did not find "that it was not illegal to apply local delivery rates to such shipments." The Commission on the contrary found as shown by Exhibit "E" of plaintiffs' bill that "the collection of interstate domestic rates on cotton delivered to waterfront warehouses or compresses at Houston and Galveston is not in our judgment illegal." Interstate domestic rates as used by the Commission do not include all local delivery rates, but include only such local delivery rates as are on file with the Commission.

III-G

Petitioners deny as stated in paragraph XIV of plaintiffs' bill that the Commission's finding of undue prejudice was not supported by the evidence. Petitioners further deny that the Commission's finding in any way deprives plaintiffs of any lawful advantage, natural or geographical, accruing to plaintiffs.

III-H

Petitioners deny all allegations in paragraphs XV and XVI of plaintiffs' bill, and assert that the Commission's findings are amply supported by the evidence.

III-I

Petitioners deny all allegations contained in paragraphs XVII and XVIII of plaintiffs' bill and assert that the Commission's findings were in accordance with the issues and based upon the evidence.

[fol. 71] III-J

Petitioners deny all allegations contained in paragraph XIX of Plaintiffs' bill and assert that the Commission's findings were based upon the evidence and in accordance with the issues. Petitioners deny that the Commission has in any way declined or refused to establish for plaintiffs the same transit privileges and the identical allowances as have been established and approved for all other cotton shippers.

Petitioners further deny that plaintiffs have in any way been deprived of their property without due process of law.

III-K

Petitioners deny that the services rendered by the carriers, as stated in paragraph XX of plaintiffs' bill, on export cotton are greater than the services rendered on local delivery cotton.

III-L

Petitioners deny allegations contained in paragraph XXI of the plaintiffs' bill and assert that no farmer will be in-

jured by the *the* Commission's order, but assert on the contrary that farmers will be benefited by said order.

III-M

Petitioners deny all allegations contained in paragraph XXII of plaintiffs' bill and assert that the intraplant service of moving cotton within the shipside facilities is in no way similar to the transportation service of switching cotton within the railroad terminals at the gulf ports.

III-N

Petitioners deny allegations in paragraph XXIII of plaintiffs' bill and assert that plaintiffs have had full opportunity to be heard.

III-O

Petitioners deny any and all allegations contained in paragraphs XXIV to XXX, inclusive of plaintiffs' bill.

III-P

Petitioners deny allegations contained in paragraph XXXI of plaintiffs' bill, and assert that the transportation service performed in the handling of export cotton and ship-
[fol. 72] side cotton is like and contemporaneous with the transportation service rendered in the handling of local and domestic cotton.

III-Q

Petitioners deny any and all allegations contained in paragraphs XXXII to XXXV, inclusive of plaintiffs' bill and assert that plaintiffs are without equity in the premises.

IV

Your petitioners further show that the effect of said order is and will be to remove the unjust discrimination and preference enjoyed by the plaintiffs above mentioned as against these petitioners, and that in the event said order of the Interstate Commerce Commission should be suspended, enjoined or the enforcement of same in any way delayed by this Honorable Court the result thereof would be an in-

evitable, burdensome and unjust delay as against these petitioners, depriving them of the benefits to which they are entitled by virtue of said order, and that any such suspension or injunction delaying the going into effect of said order by this Honorable Court would result in unjust discrimination and preference as against these petitioners in favor of the plaintiffs above mentioned.

V

Your petitioners further show that their members are engaged in active competition in the buying, selling and distributing of cotton with the above mentioned plaintiffs, that heretofore said plaintiffs have enjoyed an unjust and undue preference and advantage over petitioners members because of the conditions existing with regard to the freight rates on cotton from interior points in Texas, Louisiana, Arkansas and Oklahoma to Gulf Ports in Texas and Louisiana and that if the above mentioned order of the Interstate Commerce Commission should be suspended, enjoined or its enforcement in any way delayed by order of this Honorable Court the undue discrimination and unjust prefer- [fol. 73] ence heretofore enjoyed by the plaintiffs above mentioned as against petitioners' members would be continued to the great damage of petitioners' members and that same would work an irreparable injury upon petitioners' members.

VI

Your petitioners further show that they have requested permission to intervene and do hereby intervene in this cause by virtue of the Acts of Congress of June 18th, 1910, Paragraph 5, 36 Stat. 543, Acts of March 3rd, 1911, Chapter 231, Paragraph 212, 36 Stat. 1150 and the laws of the United States of America whereby the right and authority is granted to these petitioners for such intervention.

Wherefore these petitioners respectfully pray that notice be given to the parties to this cause of this intervention and that upon hearing of this cause said order of the Interstate Commerce Commission be in no way suspended, enjoined or its enforcement in any way affected by this Honorable Court.

Your petitioners further pray for such other and further relief as may be proper in the premises.

Respectfully submitted.

A. L. Reed, Solicitor for Petitioners.

[File endorsement omitted.]

Duly sworn to by J. K. Moore. Jurat omitted in printing.

[fol. 74] In United States District Court

[Title omitted]

Petition in Intervention of Oklahoma State Cotton Exchange—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Comes now, The Oklahoma State Cotton Exchange, a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, and with its domicile in Oklahoma City, Oklahoma, with leave of this honorable court, intervenes herein and complaining of Alexander Sprunt & Son, Inc., Anderson Clayton & Co., a joint stock association, Houston Compress Company, a Texas corporation, Ship Channel Compress Co., a corporation, Texas Farm Bureau Cotton Association, a co-operative marketing association, Turning Basin Compress Co., a corporation and Weatherford Crump & Co., a corporation, and in answer to the bill of complaint filed by said plaintiffs in the above cause would respectfully show unto this honorable court, as follows:

1

That heretofore towit, on or about the 1st day of July 1927, there was filed in this honorable court against the United States of America by the above named plaintiffs, a certain complaint wherein the plaintiffs complain of an order of the Interstate Commerce Commission, issued April 4th, 1927, in Cause No. 14940, by the Interstate Commerce Commission, by virtue of which order said Interstate Com-

merce Commission found that discrimination and undue preference existed in the freight rate adjustment on cotton to gulf ports in the States of Texas and Louisiana and by virtue of which order the said discrimination and undue preference was removed.

2

Your intervenor further shows that said order grew out [fol. 75] of an investigation made by the Interstate Commerce Commission with regard to the freight rates on cotton from interior points in the States of Texas, Arkansas, Oklahoma and Louisiana to gulf ports in the states of Louisiana and Texas, and that this intervenor, as well as approximately two hundred and sixty two other parties, consisting of municipalities, corporations, firms and individuals in the States of Texas, Arkansas and Louisiana, was a party to said investigation and participated in said proceedings. This intervenor had a material interest in such investigation and in any orders which might be issued by the Interstate Commerce Commission as a result thereof, for the reason that unjust discrimination and preference existed in favor of certain cotton shippers and warehouses located at gulf ports in Houston, Texas, and New Orleans, La., whereby unjust and preferential freight rates were enjoyed by such other cotton shippers and warehouses as against the intervenor herein and its various members.

3

Your intervenor shows that the order of the Interstate Commerce Commission hereinabove mentioned was issued by said Commission after due and legal notice and hearing and after lengthy investigation in which there was presented to said Commission a great mass of evidence with regard to the matters involved in the investigation. In this investigation the plaintiffs in this cause were given full opportunity properly to present their cause and to protect their interests; and your intervenor further shows that said order was legally proper and a just order and issued under the proper*ty* authority of the said Interstate Com-

merce Commission; and that said order and each finding made by the Interstate Commerce Commission were and are supported by ample evidence.

4

Your intervenor further shows that the effect of said order is and will be to remove the unjust discrimination and preference enjoyed by certain cotton shippers and warehouses at the Gulf ports in the States of Texas and Louisiana as against this intervenor; and in the event said [fol. 76] order of the Interstate Commerce Commission should be suspended enjoined or the enforcement of same in any way delayed by this honorable Court, the result thereof would be inevitable, burdensome and unjust delay, and would deprive this intervenor of the benefits to which it is entitled; and that a suspension of such order, which would delay the effective date of said order, would result in further unjust discrimination and preference against this intervenor in favor of such cotton shippers and warehouses above mentioned.

5

Your intervenor further shows that the cotton shippers of Oklahoma, members of the Oklahoma State Cotton Exchange, are engaged in the active competition in the buying, selling and distribution of cotton with the above mentioned cotton shippers at the Gulf ports in the States of Texas and Louisiana; that heretofore certain of said shippers located at the Gulf ports in said States have enjoyed an unjust and undue preference and advantage over them, because of the conditions existing with regard to the freight rates on cotton from interior points in the States of Texas, Louisiana, Arkansas and *Louisiana,* and if the above mentioned order of the Interstate Commerce Commission should be suspended, enjoined or its enforcement in any way delayed by order of this honorable Court, the undue discrimination and unjust preference heretofore enjoyed by such other cotton shippers will be continued to the great damage of this intervenor and its members, and would work an irreparable injury to them.

Your intervenor denies that the order of the Corporation Commission denies to the plaintiffs the benefit of any transmit privileges at their facilities on shipments which are later moved to steamer berths, denies that said order creates an undue preference and denies that there is no competent evidence upon which to base the finding and order of the Corporation Commission, adjusting the rates to the various concentrators using port facilities and interior facilities other than those located at compress points; denies [fol. 77] that the said order will deprive the plaintiffs of their property without just compensation without a full hearing and consideration.

Intervenor denies that the evidence introduced before the Interstate Commerce Commission showed that export shipments of cotton involved additional and different services from those being rendered to local shipments of cotton.

Intervenor denies that the finding and order of the Commission that the two rate plan gave to the warehouses and shippers using the warehouses owned by the plaintiffs an unnatural and unlawful preference over uptown and interior warehouses and shippers and subjected such uptown and interior warehouses and shippers to an unnatural and unlawful disadvantage, were unwarranted by the evidence and not supported by substantial evidence.

Intervenor denies that the order of the Commission was made for the purpose of compelling the carriers to bring about an equalization of commercial advantages and commercial conditions which are beyond the jurisdiction and power of the Commission; and this intervenor alleges and states that the order of the Commission does not deprive the plaintiffs of any natural, geographical or commercial advantage to which they are legally entitled.

Intervenor further denies that the rate fixed by the order of the Corporation Commission was without warrant in the issues, or without support in the evidence.

Intervenor denies that the orders of the Commission places the plaintiffs at a net penalty or disadvantage in competition with other warehouses, or deprives them of their property without due process; and denies that the order of the Commission deprives the plaintiffs of any

transportation privilege accorded to other shippers, or deprives the plaintiffs of any advantage which they may have by reason of more advantageous natural or geographical location.

Intervenor denies that the order of the Commission authorizes the carriers to absorb costs for services performed by the carriers for certain shippers and prohibits such allowances on similar services performed for the plaintiffs; [fol. 78] and denies that the order deprives the plaintiffs of the benefit of the location of their warehouses and facilities, constructed for the purpose of handling shipments or that the order authorizes preferential services to be performed by competitors of plaintiffs.

Intervenor denies that the order of the Commission, or any portion thereof is void because of lack of evidence to support the same, and specifically avers that each finding of the Commission is supported by sufficient evidence.

Wherefore this Intervenor respectfully prays that upon the hearing of this cause, the order of the Interstate Commerce Commission shall be in no way suspended or enjoined; and that plaintiffs complaint be dismissed, and for such other and further relief as may be proper in the premises.

Charles B. Cochran, Solicitor for Intervenor Oklahoma State Cotton Exchange.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed July 12, 1927

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel in the above entitled suit.

P. J. Farrell, J. Stanley Payne.

[fol. 80] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed July 12, 1927

The Interstate Commerce Commission, intervening defendant in the above entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs I to V inclusive of the bill of complaint, the Commission admits for the purposes of this suit, that the allegations therein contained are true.

II

Answering Paragraphs VI to XXXV, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated June 23, 1925, referred to in paragraph VII, and the report and order dated April 4, 1927, referred to in paragraph VIIII, copies of which, except as to appearances and lists of parties as stated in said paragraphs, are attached to and made a part of the bill of complaint as Exhibits B and E; that said reports and orders were made and entered in a consolidated proceeding before the Commission covered by the Commission's dockets numbered 13991 and 14940; that the Commission refers the court to the text of said reports and orders 100 I. C. C. 159 and 123 I. C. C. 685 for full, com-[fol. 81] plete and accurate information concerning the contents of said reports and orders and for a description of the proceedings before the Commission upon which the reports and orders were and are based; that in said con-

solidated proceeding the plaintiffs were, and each of them was, accorded the full hearing provided for in the Interstate Commerce Act; that at hearings in said consolidated proceeding a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said consolidated proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of plaintiffs by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said consolidated proceeding the aforesaid reports and orders of June 23 and April 4; that said reports and orders included the Commission's findings of fact, decisions, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is fully supported and justified by the evidence submitted to the Commission in said consolidated proceeding as aforesaid.

The Commission further alleges that, in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said consolidated proceeding by their counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that neither of said orders of June 23 and April 4 was made or entered either [fol. 82] arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering Paragraphs XIV to XXXV, inclusive of the bill of complaint, the Commission denies that said orders of June 23 and April 4, are or that either of said orders, is either unlawful or void, for the reasons or for any of the reasons, set forth in said paragraphs.

The Commission particularly denies that the plaintiffs, and also denies that any of the plaintiffs, will suffer either irreparable damage or irreparable injury, as stated in paragraphs XXXIV and XXXV of the bill of complaint, unless said orders of June 23 and April 4 are enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and orders of June 23, 1925 and April 4, 1927, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. P. J. Farrell, of Counsel.

[fol. 83] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed July 12, 1927

Now into Court comes the United States of America, made defendant herein, through Wayne G. Borah, United States Attorney and T. M. Logan Bruns, Assistant United States Attorney, for the Eastern District of Louisiana, duly authorized and for answer to the bill of complaint

filed against it in the above entitled cause, with respect says:

I

Respondent, on information and belief, admits article one of plaintiff's petition.

II

Respondent, on information and belief, admits article two of plaintiff's petition.

III

Respondent, on information and belief, admits article three of plaintiff's petition.

IV

For lack of sufficient knowledge on which to base a belief respondent denies article four of plaintiff's petition.

V

Respondent admits article five of plaintiff's petition.

VI

[fol. 84] Respondent admits article six of plaintiff's petition.

VII

Respondent neither admits nor denies article seven of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof.

VIII

Respondent neither admits nor denies article eight of plaintiff's petition and in so far as the same may become material upon the hearing, it will require strict proof

thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof.

IX

Respondent finds no article nine contained in plaintiff's bill of complaint.

X

Respondent neither admits nor denies article ten of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof; and where in said article refers to the testimony before the Commission and particularly that part thereof relating to the difference in character of the services rendered to shipments of export cotton from those rendered domestic or local delivery cotton your respondent refers to said testimony in toto, and the findings of the Commission thereon which appear in Exhibits "B" and "E" of plaintiff's bill of complaint at pages 58, 59 and 78.

XI

Respondent neither admits nor denies the first paragraph [fol. 85] of article eleven of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety a part hereof.

As to the Commission's findings referred to in article eleven respondent states the fact to be that they are to be found not in Exhibit "B" of plaintiff's petition but in Exhibit "E" under the headings "Concentration and Compression at Interior Points" page 89 and respondent makes said decision in its entirety a part hereof, and further answering said article your respondent specifically

denies the last paragraph thereof commencing with the words "Notwithstanding the foregoing finding."

XII

In so far as article twelve of plaintiff's petition may be taken to state facts contrary to the Commission's findings it is denied.

XIII

Respondent admits subject to verifications and reference to the Commission's findings in its entirety, article thirteen of plaintiff's petition.

XIV

As to the findings and orders of the Commission referred to in article fourteen of plaintiff's petition respondent refers to them in toto, appearing as Exhibits "B" and "E" of plaintiff's petition and your respondent specifically denies that said decisions and orders of the Commission are unwarranted or unsupported by the evidence and further denies the other allegations and conclusions set forth in said article.

XV

Respondent denies article fifteen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVI

Respondent denies article sixteen of plaintiff's petition [fol. 86] and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVII

Respondent denies article seventeen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVIII

Respondent denies article eighteen of plaintiff's petition.

XIX

Respondent denies article nineteen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XX

Respondent denies article twenty of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XXI

Respondent neither admits nor denies the purposes for which the Texas Farm Bureau Cotton Association exists and in so far as they may become material upon the hearing it will require strict proof thereof, and your respondent denies the other allegations contained in article twenty-one of plaintiff's petition.

XXII

Respondent requires strict proof of any of the allegations contained in article twenty-two that may become material upon the hearing and specifically desires the conclusion therein stated that the action of the Commission is arbitrary and void.

XXIII

Respondent denies article twenty-three of plaintiff's petition.

XXIV

Respondent denies article twenty-four of plaintiff's petition.

XXV

Respondent denies that the order of the Commission is null and void and states that the Commission recognized [fol. 87] the legitimate advantages of petitioner's loca-

tions, as appears from its decisions, Exhibits "B" and "E," pages 60 and 84.

XXVI

Respondent denies article twenty-six of plaintiff's petition.

XXVII

Respondent denies article twenty-seven of plaintiff's petition and for the findings of the Commission as to the "reasonableness of existing rates" refers to Exhibits "B" and "E" of plaintiff's petition, particularly pages 62 and 64.

XXVIII

Respondent denies article twenty-eight of plaintiff's petition.

XXIX

Respondent denies article twenty-nine of plaintiff's petition.

XXX

Respondent denies article thirty of plaintiff's petition.

XXXI

Respondent denies that the order of the Commission is void and for further answer thereto refers to the said decisions and orders appearing as Exhibits "B" and "E" of plaintiff's petition.

XXXII

Respondent neither admits nor denies article thirty-two of plaintiff's petition and in so far as same may become material upon the hearing it will require strict proof thereof, and for further answer thereto respondent states that hearings of the Commission were carried on jointly with the Railroad Commission of Texas and the Public Service Commission of Louisiana as appears from Exhibits "B" and "E," pages 56 and 74.

XXXIII

Respondent denies article thirty-three of plaintiff's petition.

XXXIV

Article thirty-four is argumentative and speculative and respondent is not required to answer the same, but if upon the hearing any allegation or part thereof becomes material respondent will require strict proof thereof.

[fol. 88]

XXXV

Respondent admits, subject to verification, that said order of the Commission complained of by petitioners will become effective on July 16, 1927.

XXXVI

And further answering plaintiff's petition respondent alleges that the matters and things set forth in the bill of complaint and sought to be put in issue before the Court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act and that the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

Respondent alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct and,

It specifically denies—

(a) Any fact or facts alleged in the bill of complaint or any part of the same, which deny or which seek to deny any fact or facts found by the Commission.

(b) Any fact or facts alleged in the bill of complaint or any part of the same, which are inconsistent with any fact or facts found by the Commission.

(c) Any and all inferences of fact from any particular fact or facts alleged in the bill of complaint, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the Commission.

(d) Any fact or facts alleged in the bill of complaint or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission.

(e) Any fact or facts alleged in the bill of complaint or any part of the same, which attack or which seek to attack the order of the Commission and to show facts other than those found by the Commission.

(f) Any allegation in the bill of complaint or any part of the same, which allege that facts were found by the Commission in its reports which, as shown on the face thereof, were not so found.

(g) Any conclusions of law alleged and insisted upon in the bill of complaint, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission.

(h) Each and every allegation in the bill of complaint contained not herein specifically admitted or denied.

[fol. 89] Wherefore, having fully answered, respondent prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Wayne G. Borah, United States Attorney. T. M. Logan Bruns, Assistant U. S. Attorney.

Duly sworn to by T. M. Logan Bruns. Jurat omitted in printing.

[fol. 90] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF GALVESTON COTTON EXCHANGE AND BOARD OF TRADE & GALVESTON CHAMBER OF COMMERCE—Filed July 12, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Comes now the Galveston Chamber of Commerce a corporation duly incorporated under the laws of the State of Texas, and having its principal office at Galveston, Texas, of which L. W. Reed is president and E. H. Thornton, Traffic Manager and the Galveston Cotton Exchange and Board of Trade, a corporation, duly incorporated under the laws of

the State of Texas, and having its principal office at Galveston, Texas of which Karl Tidemann is President, and G. H. Brown is Secretary, and pray the Court to be permitted to intervene in the above numbered and entitled cause, wherein Alexander Sprunt & Son, Inc. et al., are Complainants, against the United States of America as Respondent, being a Bill in Equity, wherein the Complainants seek to restrain and enjoin the order of the Interstate Commerce Commission establishing and putting into effect certain rates, charges and practices as set forth in the order of said Commission of date April 4, 1927, as is fully set forth in said Bill of Complaint and the Exhibits attached thereto and made part thereof.

1

The Intervenors would show to the Court that the Galveston Cotton Exchange and Board of Trade, is a corporation created for the protection and advancement of the interests of cotton merchants engaged in business in the City of Galveston and that it numbers among its members, per- [fol. 91] sons, firms and corporations engaged in the purchase, sale concentration and exportation of cotton, and that the Galveston Chamber of Commerce, is an organization created in existence for the purpose of advancing and protecting the interests of cotton merchants in the City of Galveston, and has among its members, various persons, firms and corporations engaged in the purchase, sale and concentration and exportation of cotton at and thr-u- the Port of Galveston, and that each of said corporations appearing herein in behalf of and for the benefit of its members, and that said corporations and each of them, are parties and complainants and interested in and participated in the hearings, complaints and investigations held by the Interstate Commerce Commission and designated in Complainants' Bill as being Docket Nos. 13991 and 14940 on the docket of the Interstate Commerce Commission.

2

That said Intervenors file this their Intervention under and by the authority of the Acts of Congress, known as Section 1005 United States Compiled Statutes, 36 U. S. Statute

1150, and Section 1006 of the United States Compiled Statutes, being 36 U. S. Statute 115, which statutes provide:

"Communities, associations, corporations, firms and individuals who are interested in controversies of questions before the Interstate Commerce Commission or in any suit which may be brought by any one under the provision of this Chapter, or the Acts of which it is amendatory, or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceeding at any time after the institution thereof."

And further:

"Complainants before the Interstate Commerce Commission interested in a case, shall have the right to appear and be made parties in the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

3

Intervenors adopt the allegations contained in the answer of the United States of America, and of the Interstate Commerce Commission filed in this case, and intervene as Defendants in said cause.

4

Said Intervenors and each of them, would further show [fol. 92] the Interstate Commerce Commission, in due manner and form heard the complaints and the testimony adduced by them, and each of them, in all the proceedings had by said Interstate Commerce Commission, which proceedings are set forth in the Exhibits attached to Complainants' Bill, and findings and orders of said Interstate Commerce Commission were made and entered only after a full investigation and hearing had in said causes and the testimony presented in support thereof, especially the testimony presented on behalf of the Complainants, and that the record of the testimony introduced before and heard by the Interstate Commerce Commission in each and all of the hearings and investigations described in said Bill of Complaint amply supports the findings and orders of said Commission.

5

That Exhibit No. 3 attached to Complainants Bill, being the report of the Interstate Commerce Commission of date April 4, 1927, finds that the practices and actions of the Complainants in charging and assessing the rate of 80¢ for what is termed "city delivery" on cotton and 83½¢ on shipside for export cotton, was a discrimination against cotton merchants and shippers located back of the water front in the City of Galveston, and that upon consideration of all the facts and circumstances, that the Commission was of the opinion, and found that a fair and reasonable basis for equalizing city delivery and shipside rates would be to increase city delivery rates 1¢ per hundred pounds and reduce shipside rates, exclusive of wharf charges to the basis of the increased city delivery rates, and that such finding was without prejudice to further inquiry into the reasonableness of the above rates in connection with other causes pending before said Commission, and that the order of said Commission required the Complainants to publish and establish in the manner required by law, and in the manner indicated in the report of the Commission, export and interstate domestic rates, charges, regulations and practices, which would remove the aforesaid undue prejudice and preference, but that said order in its terms does not fix the exact rate or charge to be made by the Complainants.

6

Intervenors would further show to the Court that the [fol. 93] services performed by Intervenors in delivering cotton from warehouses and compresses to vessels adjacent thereto, was a plant service, which finding was amply supported by the evidence before said Commission and before this Court.

7

That all of the facts and findings, judgments and orders of the Interstate Commerce Commission in the proceedings, hearings and investigations referred to in Complainants Bill, were and are supported by evidence presented said Commission and now before this Court.

Intervenors would further show to the Court that the rates and practices now in force and effect by the Complainants, as shown by Complainants Bill, and the evidence introduced before said Commission, discriminated against the cotton merchants, which are members of the two intervening corporations, and have caused and are causing such cotton merchants to suffer serious loss in their business, and if continued, will result in further losses, and that the members of the intervening corporations are without remedy in the premises.

Wherefore Intervenors pray that the application of these Complainants, for a temporary stay or suspension of the operation of said orders of the Interstate Commerce Commission, and for an interlocutory injunction suspending the enforcement, operation and execution of said orders, in whole or in part, or setting the same aside, and for a perpetual injunction decreeing that said orders be set aside, annulled and suspended and its operations, enforcement and execution forever enjoined, be by this Court in all things refused.

Galveston Cotton Exchange and Board of Trade, Galveston Chamber of Commerce, by Mart H. Royston, Attorney.

Duly sworn to by E. H. Thornton. Jurat omitted in printing.

[fol. 94] [File endorsement omitted.]

[fol. 95] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF MANCHESTER TERMINAL CORPORATION FOR LEAVE TO INTERVENE—Filed July 12, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Now Comes Manchester Terminal Corporation, a Texas corporation, with its principal office in Houston, Harris

County, Texas, and respectfully prays leave to intervene in the above entitled cause and to become a party to said proceeding with the full right to appear and to take testimony and participate in all matters pertaining to said proceeding, and respectfully represents:

[fol. 96]

I

Your petitioner respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding in that it owns and operates a cotton warehouse and cotton concentration facilities, including cotton compresses, and also owns wharves or docks which are located in the vicinity of such warehouses, at the City and Port of Houston, Houston, Texas.

II

That it conducts a general public warehouse for the handling of shipments of cotton in interstate and foreign commerce and is engaged in the business of handling, receiving and shipping cotton in such commerce for and in behalf of the owners of such cotton.

III

That the situation with respect to this intervenor is not substantially different from that described in the bill of complaint in this cause in the case of the Houston Compress Company and in the case of the Ship Channel Compress Company, plaintiffs herein, save and except that your petitioner is not owned or controlled directly or indirectly by a firm of cotton merchants engaged in the buying, selling and shipping of cotton, as was set forth in the case of said two plaintiffs.

[fol. 97]

IV

That the order given by the Commission in this case will seriously impair, if not destroy the value of the warehouse and other property owned by your petitioner.

Wherefore petitioner respectfully prays that the following pleadings appended hereto be admitted as its pleadings and petition of intervention in this case.

Respectfully submitted.

Manchester Terminal Corporation, by R. C. Fulbright, Attorneys.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF MANCHESTER TERMINAL CORP.—Filed July 12, 1927

Now comes Manchester Terminal Corporation and, with leave of the court first had and obtained, files this its intervening petition in the above entitled and numbered cause, and for cause of action respectfully represents:

I

That plaintiff is a Texas corporation with its principal office at Houston, in Harris County, Texas, and plaintiff is engaged in the business of conducting a general public warehouse, public wharves and terminal and handling facilities, for the storage, concentration, merchandising, handling [fol. 99] and shipping of cotton in interstate and foreign commerce and for the purpose of receiving and shipping cotton in such commerce.

II

That petitioner's facilities at Houston are located adjacent to the Houston Ship Channel or Port of Houston and that among the facilities it owns is a wharf and wharf building upon such channel, which is divided into five steamship berths, where a space is assigned or allocated to steamships for the assembling of cargo-s of cotton for transportation in export commerce and that near to and in the rear of such wharf and wharf building, but distinct and apart therefrom, it owns and operates certain warehouses and cotton compresses for the handling of cotton, as aforesaid.

III

Your intervenor respectfully adopts the allegations of the complainants in the above cause and particularly those allegations which allege that the order of the Interstate Commerce Commission described in said bill of complaint is unlawful, arbitrary, unconstitutional and void, and respectfully represents that the matters and things complained of in said bill of complaint will place this intervenor under great disadvantage and penalty and will bring about great and irreparable damage in that it deprives your peti-
[fol. 100] tioner of the natural advantage of the location of its cotton warehouses and places it under a penalty or disadvantage and authorizes, grants or orders that preferences be granted to other warehouses at Houston and other ports, which are remote from the waterfront, all of which will seriously hinder and interfere with your petitioner's enjoyment and profitable operation of its warehouse facilities and plant.

IV

That your petitioner was not a party to the investigation and hearings held by the Interstate Commerce Commission and described in the bill of complaint herein, for the reason that the Interstate Commerce Commission had completed and closed all of its hearings and investigation in said cause prior to the organization of your intervenor as a corporation. Your intervenor was organized as a corporation under the laws of the State of Texas on or about July 13, 1926 and the Commission had completed its hearings and closed the same on or about June 19, 1926. Your petitioner, after its organization, began the construction and erection of a plant consisting of the facilities above referred to, at great cost and expense, and did not in fact begin any actual operations in the way of handling, storing and receiving shipments of cotton until several months after its organization.

V

That on or about June 14, 1927, your intervenor, having been advised by other parties that an order had been
[fol. 101] issued by the Interstate Commerce Commission in the proceeding described in the bill of complaint herein which would effect and impair the ability of your petitioner

to profitably and properly conduct its business and enjoy the benefits of its property, caused to be prepared and filed with the Interstate Commerce Commission an application for leave to intervene in the proceeding referred to and prayed that the Commission would recommend and modify its order and grant unto it a hearing so as to give to your petitioner an opportunity to show that such order was unjust, unreasonable, invalid and discriminatory against your intervenor, a copy of which application and pleading is hereto attached and marked Exhibit "A" and made a part hereof. Said exhibit explains in detail, together with illustrations and diagrams, to show in detail the operation of its plant and facilities and how the order of the Interstate Commerce Commission will seriously damage and cause irreparable damage to your petitioner. Said intervention is made a part hereof in like manner as though fully pleaded herein.

VI

That on or about July 11, 1927, the Interstate Commerce Commission denied the application of your intervenor and declined to modify its order or grant petitioner a hearing in said cause and your petitioner is without any means of relief other than through the equity powers of this court.

[fol. 102]

VII

That by its act in denying to your intervenor the hearing and the right to present its evidence to show that said order of the Commission should not be made with respect to this intervenor, and by reason of the fact that the order of the said Commission will deprive your intervenor of its property and place it at an even greater disadvantage and penalty than that set forth and described by said petition in this cause, the Interstate Commerce Commission has undertaken to deprive your petitioner of its property without due process and without the opportunity of a hearing, all of which is in violation of the Fifth Amendment to the Constitution of the United States, and is beyond the jurisdiction and power of the Interstate Commerce Commission.

Wherefore, premises considered, inasmuch as your petitioner is remediless in the premises, and by the strict rules of common law, and if the enforcement of the said order

of the Commission of April 4, 1927, and its said order of June 23, 1925, as made a part of the bill of complaint in this cause, is not stayed and enjoined, will suffer irreparable damage, and to the end that it may obtain the relief to which it is entitled, your petitioner respectfully prays that the order of the said Commission be set wholly aside and annulled and suspended, and its enforcement, operation and execution be forever enjoined, and that such interlocutory injunction or temporary stay or suspension of the [fol. 103] operation of said order be granted as is prayed for in the original bill of complaint filed herein, and that your petitioner have such other and further relief as may be proper in the premises.

R. C. Fulbright, Solicitor for Petitioner.

Duly sworn to by R. D. Ernst. Jurat omitted in printing.

[fols. 104 & 105] EXHIBIT "A" TO PETITION OF INTERVENTION OF MANCHESTER TERMINAL CORP.

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket, No. 14940

Application of Rates on Cotton to Gulf Ports

I. C. C. Docket, No. 13991

WEATHERFORD, CRUMP & COMPANY
vs.
ABILENE & SOUTHERN RAILWAY COMPANY et al.

I. C. C. Docket, No. 11965

GALVESTON COMMERCIAL ASSOCIATION
vs.
ALABAMA & VICKSBURG RAILWAY COMPANY et al.

Application of Manchester Terminal Corporation for Leave to Intervene and for Reconsideration and Modification of Order

Now comes your petitioner, Manchester Terminal Corporation, and respectfully represents that it has an interest in the matters in controversy in the above entitled pro-

ceedings and desires to intervene and become a party to said proceedings, and for grounds of intervention represents:

1

That petitioner is a corporation organized by the laws of the State of Texas with its principal office at Houston, in Harris County, Texas, and is engaged in the business of conducting a general public warehouse, public wharves and terminal and handling facilities for the handling of shipments of cotton in interstate and foreign commerce and for the purpose of receiving and shipping cotton in interstate and foreign commerce.

2

That in the course of its business, your petitioner receives and handles shipments of cotton which are made in interstate commerce from points in Oklahoma, Texas, Arkansas and Louisiana, and has constructed wharves and docks at the port of Houston, Texas, where it handles cotton for the public over such wharves and docks for loading on steamers for shipment in export and domestic commerce. Adjacent to the wharves and docks and in the same general vicinity your petitioner owns and operates warehouses or merchandizing facilities which are used as such facilities for the storage, concentration and classification and for the re-shipment of cotton owned by cotton producers, shippers and merchants, and it receives cotton in such warehouses where merchandizing services are performed thereon for or by the owners of the cotton and thereafter delivers such cotton from such warehouses to wharves and docks belonging to it or to wharves and docks located elsewhere at Houston or to other destinations reached by rail trans- [fol. 106] portation beyond Houston, and that such cotton, or a substantial part thereof moves in and moves out in interstate or foreign commerce.

3

Petitioner further represents that its plant and facilities have been constructed within the past year and since the hearings which were held by the Interstate Commerce Commission in the above proceedings, and that at the time of

such hearings your petitioner was not engaged in such business and did not know that it would be affected by the matters being inquired into by the Commission in such proceedings, and did not know and did not have an opportunity for presentation of testimony therein and furthermore it had no facilities in existence at that time for the shipment and handling of such cotton.

4

Your petitioner further represents that it has located its warehouses and merchandising cotton facilities near to the wharves and docks constructed by it at the port of Houston for the reason that such location would give it a natural and proper advantage of location in that shipments of cotton which had been merchandized in such warehouses could be expeditiously moved therefrom to nearby wharves without necessitating further movement by railroad, and that its plant has been equipped with electric trolley devices and gasoline motor-tractors and trailers together with other devices by which such cotton may be handled from such warehouses to the wharves and placed in the berths allocated to ships serving the wharves, and that the attached exhibits "A" and "B" which are hereby referred to and made a part hereof represent graphically the location of the wharves, docks and slips and also the warehouses and other facilities of petitioner. By reference to the said Exhibit "B" attached hereto it will be noted that the wharf and wharf house is entirely separate and distinct from the warehouses in the plant owned by your petitioner and intervening railroad tracks separate the warehouses from the wharf house. Shipments moving to vessels must be placed in the respective berths marked "A," "B," "C," "D" and "E" on said plat according to the assignment of the berths to the respective ships. The trolley system referred to herein does not extend to the wharf house, but temporary bridges or cross-overs are utilized between the warehouse and the wharf house by placing the same over the intervening tracks and using such as bridges so that the motor tractors and trolleys and hand-trucks may be operated over the same in moving cotton from the warehouse to shipside. The trolley lines

are used for the movement of cotton between various compartments in the warehouse and to the press room, being what is defined on the map as the Warehouse and Compress Department.

5

That under the decision and order of the Commission rendered in the above case under date of April 4, 1927, the Commission describes warehouses which are located so that cotton may be delivered to nearby-by wharves with-
[fol. 107] out the necessity for using rail transportation or without the necessity of using drays or barges as "Waterfront Warehouses" and that under such definition, the warehouses of your petitioner would be characterized as waterfront warehouses, although they are not in fact at the waterfront.

6

Your pettitioner would respectfully represent that under such order and decision of the Commission other warehouses located at the ports are called "back-from-the-waterfront warehouses" where deliveries of cotton are made from warehouses to wharves by the use of drays or barges or switch by railroad and the railroads are authorized to refund or make allowances to the warehouses or the users of such warehouses, the cost of such drayage, barge or switching service including the cost of placing such cotton upon the wharves and within the ships' berths, but prohibits the carriers from making any such allowance for the services that may be incurred by your petitioner and the users of its warehouses in transporting cotton from such warehouses to the wharves and to the ships' berths which lie near such warehouses with the result that your petitioner and the users of its facilities are placed at a net disadvantage in competing with the warehouses and the users thereof which are termed by the Commission as back-from-the-waterfront warehouses.

7

Your petitioner represents that it costs a substantial sum of money to make deliveries of cotton from points within

the warehouses to the wharves and in the berths adjacent thereto, which sums your petitioners allege are approximately 2 cents per 100 pounds in excess of the costs of moving such cotton from points within the warehouses to cars adjacent to such warehouses where the same may be loaded for movement to other wharves or other facilities than those adjacent to such warehouses, and that such cost is also in excess of the cost incurred and services rendered in reaching drays and other facilties from points in the warehouses back-from-the-waterfront.

8

Your petitioner further represents that under the decision and order of the Commisison the rates on cotton transported to Houston or Galveston and delivered upon the wharf in the ship's berth at shipside including the service of delivery thereon, whether such cotton had been concentrated at a back-from-the-waterfront warehouse or at an interior warehouse, are no greater than the rates on cotton to warehouses located at Houston and Galveston and the services rendered in reaching drays and other facilities from points in the warehouses back-from-the-waterfront, and the effect of the order of the Commission in this case is to require that where such cotton is handled in so-called back-from-the-waterfront warehouses and has not enjoyed a previous transit privilege from the railroad, the railroads are required to reimburse the shipper for the cost of moving such cotton from points in such warehouses to the wharves and of placing it in the ship's berth within reach of ship's tackle and that in the case [fol. 108] of your petitioner the railroads are prohibited from absorbing any part of the cost of transporting such cotton from points in its warehouse to the near-by wharves and placing it within reach of ship's tackle and that such action arbitrarily deprives your petitioner of the benefit of its location near the water facilities and places it at a net penalty or disadvantage in competition with warehouses which are situated remotely from the waterfront at the ports of Houston and Galveston and will effectually deprive your petitioner of its property used for such facilities.

That at various warehouses located at Galveston dray lines go within the warehouses and take up the cotton from points within the warehouse and transport it out of the warehouses and to the wharves where it is unloaded and placed according to the instructions of the steamship representatives in the berths assigned to the ships and at other warehouses at Houston the cotton is switched by the railroads and the railroads place the cars at a compartment the cotton is located and perform the service of switching such cars from such points to the wharves and there unload the cotton and place it in the berths assigned to the steamers according to the instructions of steamship representatives and in other cases at Houston barge lines take the cotton from the warehouse and transport it to shipside where the cotton is loaded from the shipside into the ship. That in all of the three characters of cases above described the carriers under the decision and order of the Commission will absorb the entire cost of such service, while at the same time no such absorption would be allowed for the service of moving the cotton from the warehouses of your petitioner to the wharves which are owned by it, although such service is substantially in excess of that performed by the other warehouses above mentioned. Your petitioner can procure cars to be placed opposite compartments in its warehouses where cotton is located and can have the cotton switched out by the railroads to other wharves at Houston and in such case the cost of switching including the placing of the same on the wharves, will under the order of the Commission be absorbed by the railroads and the only expenses incurred by your petitioner or the owners of the cotton using the warehouses of your petitioner, would be the hand-trucking service from the compartment to the car placed alongside the compartment; whereas, in all cases where your petitioner has to move such cotton to its wharves the cotton does not only undergo service which is analagous to the movement to cars but must in addition thereto be transported by trolley line and other conveyances distances ranging from 300 to 2,500 feet and unloaded and placed in accordance with the instructions of steamship agents in the berths assigned to the

steamers serving such wharves, all of which is a much more expensive service and is a substantially different service from that performed in merely loading the cotton from the compartment to the cars and is likewise more expensive and is substantially different from the service performed by other warehouses in placing their cotton within reach of drays or loading it upon cars or moving it to barges as above set forth in the case of other warehouses, and that the net result is that your petitioner will be placed [fol. 109] at a serious disadvantage and will be subjected to unjust discrimination and its competitors will enjoy undue preferences in connection with the performance of such services under the decision and order of the Commission in these cases.

10

That the decision and order of the Commission is violative of sections 2 and 3 of the Interstate Commerce Act and of Section 500 of the Transportation Act which enjoin upon the Commssion the policy of promoting and encouraging water facilities and that such action will not only discourage the use of water facilities, but will greatly penalize facilities which have been constructed for the purpose of handling cotton economically between the railroads and the ships at the port of Houston and place a penalty upon what under ordinary conditions would constitute the most economical service to be performed in transporting such cotton from warehouses to shipside.

Wherefore your petitioner prays that it be permitted to intervene herein and be made a party to this proceeding with the same rights as other parties thereto and in the event its intervention be so allowed your petitioner further prays, premises considered, that the Commission re-consider its decision and order in this proceeding and modify its order so that the same shall not deprive your petitioner of the natural advantages of its location and so that the aforesaid preferences and discriminations shall be eliminated, and so that the users of each warehouse facility shall bear the proper charge for the services rendered or to be rendered in transporting cotton from such warehouse facilities to shipside or in the alternative, that your peti-

tioner be granted the right to an allowance or to have the users of its warehouses receive an allowance from the railroads for the movement from its warehouses to shipside in like manner as is authorized and directed for warehouses located back-from-the-waterfront and in the event the Commission shall not consider that it has the power and authority to modify its order in this case without a hearing, your petitioner respectfully requests that the case be reopened and the order set aside or suspended pending the further hearing and investigation by the Commission of the matters and allegations herein set forth and that the Commission shall grant such other and further relief as your petitioner may be justly entitled to receive.

Respectully submitted.

Manchester Terminal Corporation, by R. D. Ernst, Vice-President & General Manager.

Address: 426 Houston Cotton Exchange Bldg., Houston, Texas.

Dated June 14, 1927.

(Here follow Exhibits A and B, marked side folio pages 110 and 111 & 112)

[fol. 113] In United States District Court

Equity. No. 310

Alexander Sprunt & Sons, Inc., et al.

versus

The United States of America

Equity. No. 311

Texas & New Orleans Railroad Co. et al.

versus

The United States of America

Consolidated Causes

Order Consolidating Causes—Filed July 12/27

By agreement of all parties, complainants, defendants and intervenors, made in open court on this 12th day of July, 1927,

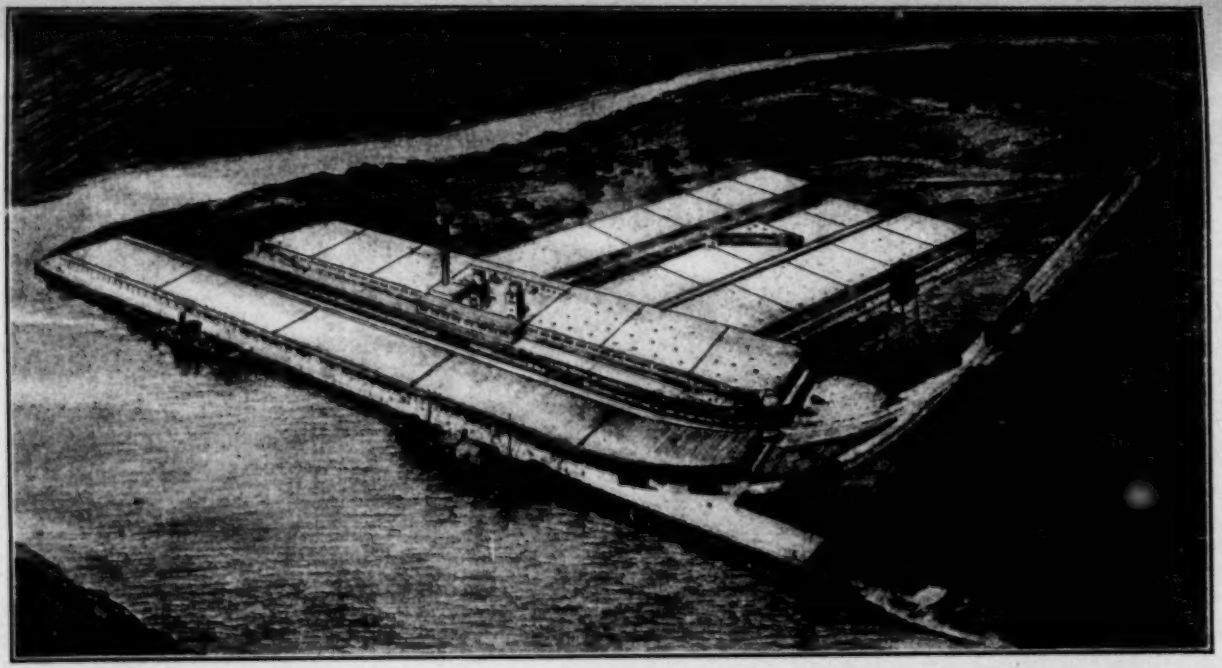


EXHIBIT "A"

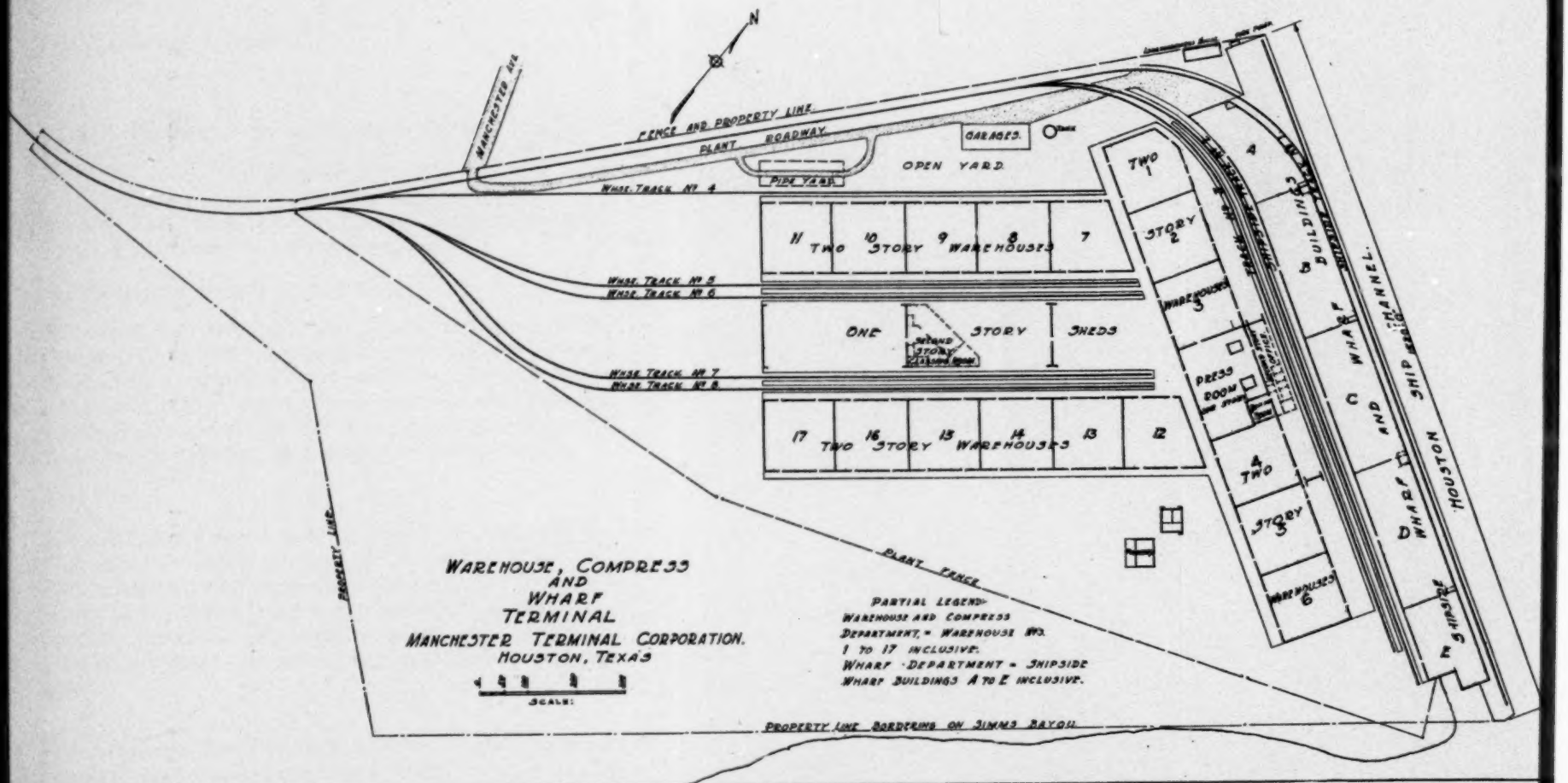
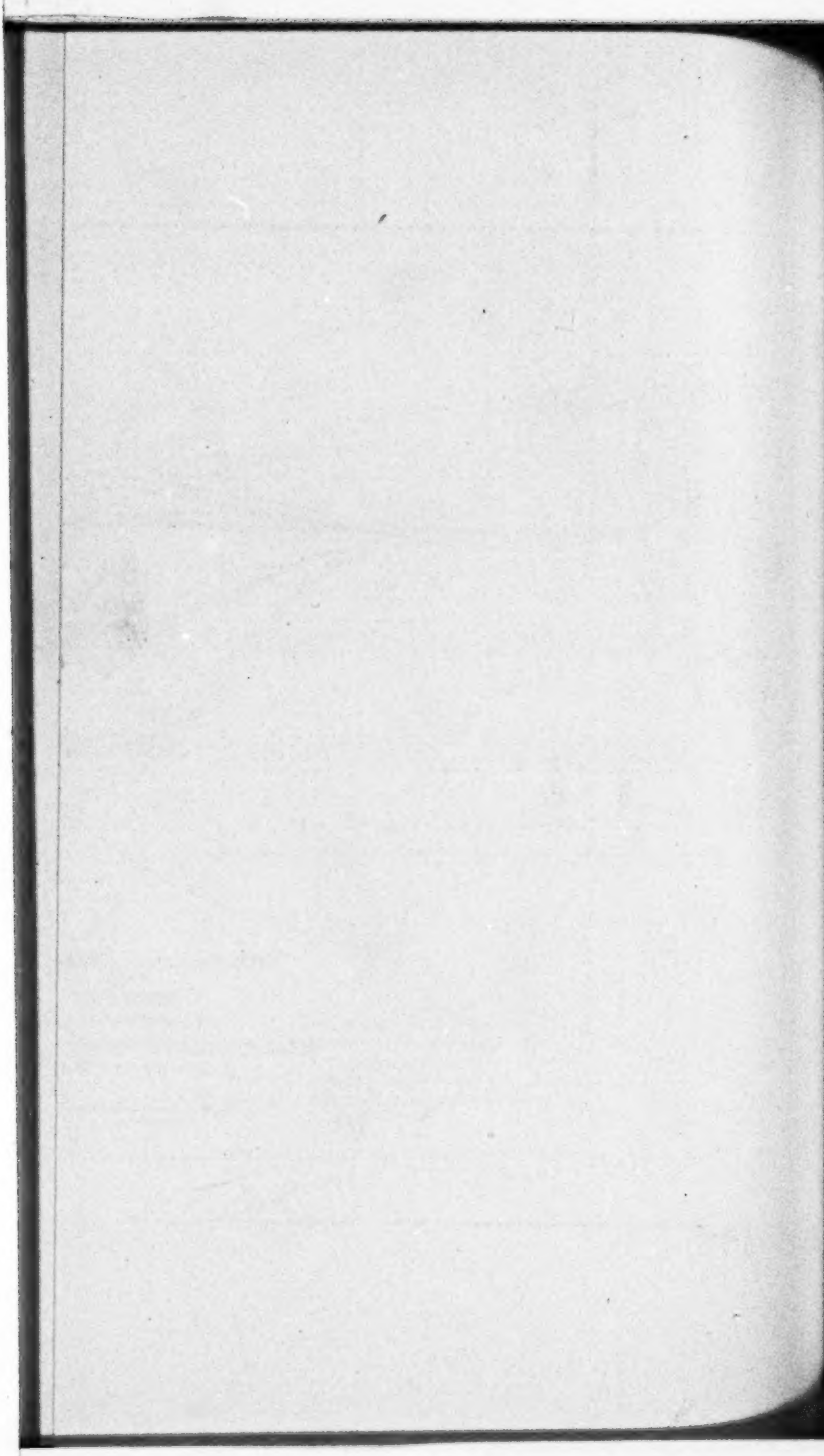

N
MANCHESTER AVE.
FENCE AND PROPERTY LINE
PLANT ROADWAY
GARAGES
OPEN YARD
PIPE YARD
WHSE. TRACK NO. 4
WHSE. TRACK NO. 5
WHSE. TRACK NO. 6
WHSE. TRACK NO. 7
WHSE. TRACK NO. 8
11 TWO 10 STORY 9 WAREHOUSES 8 7
ONE STORY SHEDS
17 TWO 16 STORY 15 WAREHOUSES 14 13 12
TWO STORY WAREHOUSE 1
WAREHOUSE 2
WAREHOUSE 3
PRESS ROOM
4 TWO STORY WAREHOUSE 5
WAREHOUSE 6
4
B BUILDING
C WHARF
D WHARF
E WHARF
SHIP CHANNEL
HOUSTON
PROPERTY LINE
PLANT FENCE
PROPERTY LINE BORDERING ON SIMMS BAYOU
WAREHOUSE, COMPRESS AND WHARF TERMINAL
MANCHESTER TERMINAL CORPORATION.
HOUSTON, TEXAS
SCALE:
PARTIAL LEGEND:
WAREHOUSE AND COMPRESS DEPARTMENT, = WAREHOUSE NOS. 1 TO 17 INCLUSIVE.
WHARF DEPARTMENT = SHIPSIDE WHARF BUILDINGS A TO E INCLUSIVE.

EXHIBIT "B"



It is ordered, that the above entitled and numbered causes be and they hereby are consolidated as a single cause and with a single record.

Dated this 12th day of July A. D. 1927.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 114] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF NEW ORLEANS JOINT TRAFFIC BUREAU FOR LEAVE TO INTERVENE—Filed Sept. 10, 1927

To the Honorable Judges of said Court:

Now comes New Orleans Joint Traffic Bureau, a voluntary organization with its principal office in New Orleans, Louisiana and respectfully prays leave to intervene in the above entitled cause and become a party to said proceedings with the full right to file brief herein and become a party to said proceeding and respectfully represents:

I

This petitioner desires to intervene in this cause in behalf of plaintiffs and in support of the petition for a permanent injunction decreeing that the order of the Interstate Commerce Commission described in the Bill of Complaint filed herein, be set aside, annulled and suspended and its enforcement, operation and execution be forever enjoined.

II

Your petitioner, the New Orleans Joint Traffic Bureau is a voluntary organization organized under the laws of the State of Louisiana with its principal office and place of business at the Board of Trade Building in said city and is made up of constituent commercial and trade organizations, of persons, firms and corporations of the city of New

Orleans, including the New Orleans Cotton Exchange, as well as other organizations and there are numbered among [fols. 115 & 116] the members of such constituent bodies for which this intervenor acts in rate and traffic matters, various firms and individuals who are engaged in buying, selling and shipping cotton from points in the states of Louisiana, Arkansas, Texas and Oklahoma to New Orleans in Interstate Commerce and in making shipments from New Orleans in Interstate and foreign commerce in competition with various other persons firms and corporations located at interior points in said states.

III

That various persons, firms and corporations at New Orleans, members of your Petitioner, are engaged in purchasing cotton at various points in the territory described in the Bill of Complaint filed herein and in shipping the same in interstate commerce to New Orleans, La., where such cotton is concentrated or stored in warehouses and also in the merchandising of such cotton and shipment of cotton from the concentration or storage warehouses where cotton stocks are maintained to points in other states and to foreign countries including shipments made over the wharves and via steamship lines at the port of New Orleans.

IV

That the order of the Interstate Commerce Commission described in the Bill of Complaint in this cause, if permitted to go into effect, will seriously impair the business of members of your petitioner and will give undue preference and advantage to their competitors who concentrate or store cotton and maintain stocks thereof at points in the interior of the States of Louisiana, Oklahoma, Texas and Arkansas.

Wherefore petitioner respectfully prays that it be permitted to file its intervening petition in this cause, and to become a party to said cause

Respectfully submitted

R. C. Fulbright, Solicitor for New Orleans Joint TrafficBureau.

[File endorsement omitted.]

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF HOUSTON COTTON EXCHANGE & BOARD OF TRADE FOR LEAVE TO INTERVENE—Filed Sept. 10, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Now comes Houston Cotton Exchange & Board of Trade, a Texas corporation with its principal office in Houston, Harris County, Texas, and respectfully prays leave to intervene in the above entitled cause and become a party to said proceeding with the full right to participate in all matters pertaining to said proceeding and respectfully represents:

1

Your petitioner desires to intervene in this cause in behalf of plaintiffs and in support of the petition for a permanent injunction decreeing that the order of the Interstate Commerce Commission, described in the Bill of Complaint filed herein, be set aside, annulled and suspended and its enforcement, operation and execution be forever enjoined.

2

This petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Texas, with its principal office at Houston, Harris County, Texas, and is organized as a Board of Trade or commercial organi-[fol. 118] zation consisting of various persons, firms and corporations located at Houston, Texas and engaged in the business of buying, shipping and selling cotton and this petitioner exists among other things for the purpose of promoting trade and increasing facilities and the amount of business done by its members and others at the city of Houston and promoting the development of the City and Port of Houston.

3

That numerous members of your petitioner are engaged in purchasing cotton at points in the territory described

in the Bill of Complaint herein and in shipping the same in interstate commerce to Houston, Texas, and other points where such cotton is concentrated or stored in warehouses and also in the merchandising of such cotton and shipment of cotton from the concentration or storage warehouses where cotton stocks are maintained to points in other states and in foreign countries including shipments made over the wharves and via steamship lines at the port located at Houston, Texas.

4

That the order of the Interstate Commerce Commission described in the Bill of Complaint in this cause, if permitted to go into effect, will seriously impair the business of members of your petitioner and will give undue preference and advantage to their competitors who concentrate or store cotton and maintain stocks thereof at points in the interior of the states of Texas, Oklahoma, Louisiana and Arkansas.

Wherefore petitioner respectfully prays that it be permitted to file its intervening petition in this cause, a copy of which will be presented to the court and be permitted to intervene and become a party to said cause.

Respectfully submitted.

R. C. Fulbright, Carl G. Stearns, Solicitors for Houston Cotton Exchange & Board of Trade.

9/1/27.—Houston Cotton Exchange & Board of Trade granted leave to intervene.

[fol. 119] [Endorsement omitted.]

[fol. 120] In United States District Court

[Title omitted]

Order Granting Preliminary Injunction—Filed July 13/27

Consolidated

Upon consideration of the application for preliminary injunction, it is ordered that same be granted, and an inter-

locutory injunction issue herein, suspending the enforcement, operation and execution of the order of the Commission complained of in the above consolidated causes until the further orders of the court.

July 13, 1927, New Orleans, La.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

Consolidated

Before Foster, Circuit Judge, and Burns and Hutcheson, District Judges

OPINION—Filed Dec. 5, 1927

HUTCHESON, D. J.:

These two suits involve the same questions and were tried together. They are brought to enjoin the enforcement of an order of the Interstate Commerce Commission requiring the carriers to equalize export and domestic rates on cotton at Gulf ports.

In suit No. 310 the plaintiffs are owners of water front cotton compresses and warehouses at Houston, Texas, and others having similar interests. In suit No. 311 the plaintiffs are railroads. The bills are very lengthy, but it is unnecessary to state them, as the main contentions of plaintiffs will be briefly referred to later.

In proceedings to which various railroads, shippers, cotton warehouses and compress owners and interested public commercial bodies were parties, the Interstate Commerce Commission investigated rates, charges and practices relative to the shipment of cotton from points in Arkansas, Oklahoma, Louisiana and Texas to Gulf ports. 77 I. C. C. 388; 100 I. C. C. 159; 123 I. C. C. 685.

The reports of the Commission, initiallly and on rehearing are quite lengthy and somewhat involved. For the purpose of these cases it is sufficient to refer briefly to certain [fol. 122] material facts found, using those pertinent to Houston as illustrating the general principles underlying the cases.

It appears that cotton is concentrated at interior points where it is compressed to a certain degree and then shipped into Houston, where it is further compressed to higher density before being exported, in order to effect a saving in ocean freight rates.

The tariffs for many years have allowed one free stoppage in transit for compression and merchandising, which latter term comprehends the weighing, sorting, marking and grading of cotton. For a number of years there have been two rates in force at the port of Houston, 80 cents per hundred pounds for local delivery, applicable throughout the switching limits and 85 cents for export, which latter includes freight charges of about 1.5 cent per hundred pounds, making a spread between domestic and export rates of 3.5 cents, this difference representing not the absolute but the approximate average cost of transferring cotton from the city compresses and warehouses back of the water front, hereinafter called "uptown" facilities to shipside.

Prior to the beginning of this present controversy there were no warehouses on the water front. There were warehouses and high density compresses in Houston situated back from the water front and in the switching limits, at a distance of from one to five miles.

Under this two rate plan the uptown facilities could bring their cotton in on the domestic rate of 80 cents and after merchandising or compressing it, declare it for export, when the railroads would carry it to the port for an additional sum of 3½¢. On the other hand the uptown facilities might, and usually did, prefer to dray their cotton to shipside paying the expense themselves. In either event it would cost them, to get their cotton to shipside about 83.5¢.

This was the practice which the railroads had inaugurated to equalize the uptown facilities using domestic rates, with interior compresses using export rates, so that whether cotton moved to port on an export rate, with the privilege [fol. 123] of stoppage in transit or moved on the domestic

rate, it would cost the uptown facilities the same to get it to shipside.

This practice was approved by the Commission in Louisiana Cotton 46 I. C. C. 451 and Galveston Commercial Association vs. A. & V. Ry., 77 I. C. C. 388.

At the time of these proceedings all the warehouses and compresses at the ports were back from the water, requiring further transportation to reach shipside, and the practice of making export rates higher than domestic rates by an amount not more than the cost of delivering the cotton from "uptown" to shipside resulted in an equality between all competing facilities and all parties were satisfied.

Commencing in 1921, through the placing of high density compresses on the piers of the Galveston Wharf Company, followed later by the erection of large warehouses with compresses on the water front at Houston, disturbing influences were injected into the situation by reason of the fact that facilities, hereafter called "water front," were able in some cases to deliver a great part of their cotton, in other cases all of it, by trucks or equivalents to shipside.

Tariffs do not define shipside delivery. Under the practice of these ports it consists in delivery to within 200 feet of the ship's tackle. The water front warehouses at Houston are so arranged that a considerable part of the cotton may be placed within that distance from the ship's tackle by the judicious berthing of ships, and these warehouses are also provided with an electric trolley system for handling the cotton when stored too far for ordinary stevedoring.

These warehouses, by using the domestic rate of 80 cents can get their cotton within reach of shipside by trucks or equivalents 3½ cents cheaper than the interior and "uptown" facilities.

This situation resulted in the filing of a complaint by Weatherford Crump & Co. in Docket 13991 asking the abolition of the two rate plan. While that proceeding was pending the Commission instituted an investigation of its own in No. 14940 and consolidated No. 13991 with it.

At the conclusion of the investigation and hearing thus instituted, the Commission, on June 23, 1925, filed its re- [fol. 124] port which found in substance that the existence of the two rate plan was unduly prejudicial to warehouses and compresses located at interior points and back from the

water front at ports and unduly preferential of warehouses and compresses located on the water front and as the result of these proceedings carriers were ordered "to readjust their rates so that such rates would not exceed the domestic rates by more than the wharfage charges."

Thereafter the carriers, upon the ground that they could not remove the preference in the manner indicated in the order of the Commission without violating its previous order in Docket No. 11965, and for the further reason that the carriers and interested parties had not been able to agree upon the rate to equalize the carriers' revenues and remove the discrimination, filed a petition to reopen, and upon this petition and that of certain persons not parties to the original proceeding, but plaintiffs in Equity No. 310, the Commission, by order, directed the reopening.

The order among other things, provided:

"It is further ordered that said proceedings be and they are hereby reopened for further hearing, in order to determine whether conditions exist which were not developed during previous hearings, or whether changes have taken place which would justify any modification of our finding in 100 I. C. C. 159—"To determine what rates should be established to comply with our finding and order."

After extensive hearings the Commission filed its report on April 4, 1927, and promulgated the order from which the plaintiffs in the cases at bar are seeking relief. In the report the Commission reaffirmed its finding that the two rate plan was unduly prejudicial and should be abolished, and found that the carriers should inaugurate one rate of 81 cents and on these findings entered the orders complained of.

In the course of the report the Commission declared reasonable the practice of the carriers to make allowance to shippers who, in lieu of switching, dray their cotton from uptown warehouses to shipside, when made on cotton which the carriers are obligated to transport to shipside under transit arrangements, and they denied the contention of the water front facilities that if the city deliv- [fol. 125] ery and shipside rates are to be equalized, the carriers should be required to discontinue the drayage allowance, or make allowance for handling the cotton from water front warehouses to shipside.

They said "The respondents (carriers) have asked us to determine whether such allowances may be made at the water front facilities, and if they may be, what they should be. Upon the present record we see no reason for condemning a reasonable allowance for drayage from uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable, considering the benefit to respondents (carriers) flowing from such substitute service, and must not be used as a cloak for unlawful preferences to shippers furnishing such substitute service. Not all of the cotton handled by the water front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging, where barging is used as a substitute for switching. But upon cotton delivered to shipside from and by water front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses, a different condition exists. The hand or electric trucking or movement by overhead trolley from the part of the water front facility known as the warehouse or compress to that part known as the wharf, is not a substitute for rail transportation, but is an intra plant movement, just the same as the handling of cotton from the interior of an uptown warehouse to the railroad car or dray is an intra plant movement.

No allowances may lawfully be made for these intraplant movements."

The shippers (plaintiffs in No. 310) and the carriers (Plaintiffs in No. 311) are at one in their contention that the Commission was without authority in law and in fact to initiate and fix the rate of 81 cents as they did, because they say the interested parties were not afforded a hearing as to its reasonableness and because there was no evidence to justify its establishment.

The shipper plaintiffs object to raising the domestic rate to 81 cents, and the carrier plaintiffs object to lowering the export rate to 81 cents.

The shippers, plaintiffs in No. 310, however pitch their main attack upon the primary ground that the order was entered in an attempt to equalize commercial conditions not in fact equal, and that it resulted in a confiscation of their property for the benefit of the interior and uptown warehouses. They say that transportation conditions, the services rendered and the privileges extended under the export rate in excess of those under the domestic rate jus- [fol. 126] tified the difference between the two and that the Commission did not order the change upon a proper consideration of transportation questions, but merely in order to and the order had the result of, enabling warehouses not so advantageously situated as plaintiffs' to compete with them; that this was not rate regulation, but confiscation.

They say further, that if the evidence does present proper transportation considerations which would justify an order of the Commission fixing a one rate plan, that no such order was in fact entere but that the Commission, by directing the allowance by the carrier for substituted service to uptown compresses, and denying it to water front compresses, does not abolish the two rate plan in favor of the single rate, but in fact establishes a multi rate plan, where each facility, except the water front will pay a rate varying with the cost of the service from its plant to shipside, with the result that the water front compresses, which at great expense have secured their sites, constructed their plants, and arranged for the handling of cotton to shipside are penalized for their foresight and expenditures through an unjust rate scheme.

They say the Commission has in effect said to the compresses and warehouses at the ports what the Mother said to the girl in the old rhyme:

> "Mother, may I go out to swim?
> Yes, my darling daughter;
> Hang your clothes on a hickory limb,
> But don't go near the water."

and that if such ruling stands, plaintiffs and those similarly situated, had better sell out, move back from the

waterfront and thus put themselves in a position of equality with their uptown competitors.

As to the fixing of a particular rate, it is conceded that the Commission did not have the power to establish as a rate reasonable and just per se 81 cents or any other rate, for the question of the reasonableness of the rates per se was not in issue, and the hearing which the law requires for the establishment of such rate was not afforded.

Plaintiffs in the two cases here, say that that is just what the Commission has attempted to do, while the Commission and those in agreement with it, with equal vigor declare that the Commission has done no such thing. They [fol. 127] say that the rate suggested has been put in at the invitation of the interested parties for the purpose of removing the discrimination and subject to the right of the carrier or shipper, in an appropriate proceeding and manner, to attack its reasonableness, and that the Commission had full authority to do under the law.

At the hearing on the application for temporary injunction the Court had no difficulty in concluding that the Commission had the power, in the state of the case presented by the record, to find a condition of undue prejudice resulting from the two rate plan, and that no ground for equitable relief would have been presented if the order of the Commission had gone only that far.

In short, that if the parties had brought into review the order of June 23, 1925, entered in 100 I. C. C. 159, merely finding discrimination and ordering its removal, the case would have presented no difficulty.

Upon the point presented in No. 311 by the carriers that the fixing of the rate was arbitrary in that it was fixed without a hearing upon and a determination as to its reasonableness and the point presented in the shippers bill in No. 310 that by reason of that part of the report quoted above which has to do with allowances for substituted service, the order did not in fact establish a one rate plan, but undertook to establish a plurality of rates by which those disadvantageously situated within switching limits would be equalized with plaintiffs, the Court experienced considerable difficulty in reaching an agreement.

Some of the members of the Court saw the matter as the Commission and those on its side see it, that the order

merely fixed a rate which entitled a shipper to get his cotton to the port, and that that part of the report which had to do with allowances was collateral to and no part of the order, or if a part of the order, was a valid exercise of authority, while others were impressed with the contention of the plaintiffs that the Commission had ordered allowances in one case and disallowances in the other and that there was grave question whether such an order did not create a condition of preference of the uptown warehouses by permitting them to get their cotton to the port at the expense of the railroad, while requiring the water front warehouses to pay their own costs.

[fol. 128] In short, the Court was in agreement that the uptown and the water front facilities should be charged the same rate, in the same switching limits. They were in doubt whether that was the effect of the order. They have, after the most careful review of the able briefs of counsel reached the conclusion that the only question for consideration is the rate established. That if that rate is the same for all persons in the same territory, that is the end of *of* the matter. That it cannot make any legal difference whether the carrier performs the service continuously or after a stop for concentration allowed by its tariff, or makes allowance in lieu of, but only in lieu of transportation, and that if attention is fixed upon the movement by the carrier, the difficulties of the case will disappear. That they arise out of, and only out of, a consideration of allowance in lieu of transportation.

That this confusion can and should be avoided by disassociating the rate from the allowances and considering each upon its own merits. That it is time enough for a shipper to complain of an allowance or a disallowance when there has been an order on it, and that the present contention is purely academic and speculative. They believe that if the water front warehouses can have cotton delivered to their own plant facilities by which they can put the cotton to shipside, it is no concern of theirs that an uptown warehouse gets its cotton to shipside at the same transportation cost. That the fact that the water front warehouses have spent money to get their sites, and made expenditures upon intra plant equipment is no matter to be considered in rates. That they are entitled to as good a rate as others situated

in the same limits but that there is no reason why they should have better rates.

In short, that they have contributed nothing to transportation, as such, in building where they did and in equipping their plants as they have, and that for what they have furnished other than transportation service, they cannot in law recover.

And finally, the Court is in agreement that whatever the order of the Commission ought to be in a specific instance upon a specific claim or allowance, or disallowance, or whatever relief might be obtained against such order, the report [fol. 129] of the Commission is so delivered and the order on it so entered as that there is no matter now presented for injunctive relief.

Proctor & Gamble vs. U. S. 225 U. S. 282.
Manufacturers Railway vs. U. S., 246 U. S. 457.
U. S. vs. Los Angeles, 273 U. S. 299.

Upon the other point asserted by both carrier and shipper viz: that they are entitled to relief as against the naming of 81 cents as the rate to be adopted in order to remove the discrimination found (1) because the Commission cannot initiate a rate without a determination of its reasonableness per se, and (2) because if the Commission has the power to do so, there is no evidence here to justify its finding, we have reached the conclusion that plaintiffs are wrong on both points, though not without, at least on the part of the writer, considerable difficulty.

Considering them inversely, it is conceded on all sides that the proceeding before the Commission was not designed to and that the Commission did not attempt to, fix the rate of 81 cents as a just and reasonable rate, per se.

The carrier and shipper plaintiffs assert that the Commission has no power to fix a rate unless its reasonableness per se, is determined.

The Commission, and those on its side, declare that where, as in this case, a rate is selected between two rates, both of which have been declared to be within the zone of reasonableness, the finding of the Commission establishing such rate required only evidence that it was a just and reasonable rate to effect removal of the discrimination, and not that it was just and reasonable per se, citing:

U. S. vs. Illinois Central R. R., 263 U. S. 515.
Swift Lbr. Co. vs. Fernwood & Gulf R. R., 61 I. C. C. 485.
Arkansas Jobbers Assn. vs. Dir. Gen., 59 I. C. C. 662.
Ridenour-Baker Mer. Co. vs. A., T. & S. F., 113 I. C. C. 629.

In addition to these cases, the Commission cities as analogous decisions of the Commission and of the Courts Sec. 13, Par. 4.

The difference between the section there discussed and Sec. 15 under which the action here was taken is apparent. There the requirement is merely that the Commission shall prescribe the rate, fare or charge to be observed in such manner as in its judgment will remove preferences, whereas [fol. 130] here, where a discrimination is found, the Act provides:

"The Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare or charge, or rates, fares or charges to be thereafter observed in such cases, and * * * what individual or joint classification, regulation or practice is or will be just, fair and reasonable to be thereafter followed."

and it my opinion that decisions construing Sec. 13 throw little light on the section at bar.

The Court is convinced that while under Sec. 3 under which this proceeding was taken, it was competent for the Commission to not only forbid the discrimination, if there was one, but to fix a rate which it found to be just, fair and reasonable which would do away with the practice condemned, it is essential to the fixing of such a rate that a hearing be had and a finding made upon its reasonableness.

The full Court is, however, of the opinion that a fair construction of the words "just and reasonable" as used in the context above quoted, permits the conclusion that in a discrimination case under Sec. 3 such as this is, it is only necessary that the rate fixed upon to remove the discrimination be found to be just and reasonable for that purpose, and that it is not necessary that it be found just and reasonable per se.

So believing, we overrule the first contention of plaintiffs, that the Commission is without power in this kind of proceeding to fix as just and reasonable for the purpose of removing a discrimination, a rate which has not been found to be just and reasonable per se.

We are further of the opinion that in view of the proceedings before the Commission, in which all parties participated under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, petitioners having participated in that hearing without objection or contest, and the carrier plaintiffs, having in fact invoked the Commission's aid upon the point, are in no position now to seek injunctive relief against the named rate, but should, if the rate is deemed not just and reasonable per se, pursue their remedy before the Commission in appropriate proceedings available to them for that purpose.

Since we find upon the second point that while there is no evidence to support a finding, nor did the Commission [fol. 131] attempt to find that the rates were just and reasonable per se, there is ample evidence to support a finding that under the practice prevailing as to shipments to the ports a rate of 81 cents would be a just and reasonable rate to remove the discrimination existing under the two rate plan, it follows from what we have said, that no ground for injunctive relief exists; that the temporary injunction heretofore issued should be recalled, and that the bill should be dismissed for want of equity.

Houston, Texas, December 5, 1927.

[File endorsement omitted.]

[fols. 132 & 133] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, AT HOUSTON

Equity. No. 311

TEXAS & NEW ORLEANS R. R. Co.

vs.

THE UNITED STATES OF AMERICA

Equity. No. 310

ALEXANDER SPRUNT & SON, INC., et al.

vs.

THE UNITED STATES OF AMERICA

Consolidated

FINAL ORDER DISSOLVING INJUNCTION AND DISMISSING THE BILLS—Filed Dec. 5, 1927

Upon further consideration of these causes, it appearing to the Court that the plaintiffs are not entitled to any of the relief prayed for, and that the interlocutory injunction heretofore entered should be recalled and vacated, and that the bills should be dismissed for want of equity:

It is ordered that the interlocutory injunction heretofore issued in this cause on July 13, 1927, suspending the enforcement, operation and execution of the order on the Commission complained of in the above consolidated causes be, and the same is, hereby recalled and the stay granted thereby, is hereby vacated and dissolved and that the bills of the plaintiffs in the above styled and numbered causes be and they are hereby dismissed for want of equity.

New Orleans, La., December 2, 1927.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 134] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR APPEAL AND ORDER ALLOWING SAME & FIXING BOND—Filed Dec. 31, 1927

To the Honorable Joseph C. Hutcheson, Jr., District Judge:

The plaintiffs, Alexander Sprunt & Son, Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford Crump & Company and Intervenor Manchester Terminal Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 5th day of December, A. D. 1927, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith and they pray that their appeal be allowed and that citation be issued as provided by law and that a transcript of the record proceedings and documents upon which said decree was based duly authenticated be sent to the Supreme Court of the United States sitting at Washington, D. C., under [fol. 135] the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

Fulbright, Crooker & Freeman, R. L. Potts, C. K. Bullard, James J. Shaw, Attorneys for Plaintiff.
R. C. Fulbright, of Counsel.

Dated this 31st day of December, A. D. 1927.

Appeal allowed upon giving bond as required by law for the sum of $250.00.

J. C. Hutcheson, Jr., Judge.

[File endorsement omitted.]

[fol. 136] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 31, 1927

The plaintiffs, Alexander Sprunt & Son., Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford, Crump & Company, and intervenor, Manchester Terminal Corporation, respectfully specify as their reasons for appealing from the decree entered on December 5, 1927, the following assignment of errors:

Foreword

In the following assignments the term "plaintiffs" is used to cover both the original petitioners and the plaintiff intervenor, The Manchester Terminal Corporation. The term "plaintiff warehouses" is used to cover the warehouse and compress facilities which are located near the waterfront so that it is not necessary to use drays, or switching, in moving the cotton to ship's berth on the wharves, and which are controlled by stock ownership, or otherwise and, are used by plaintiff or any of them.

One

The Court erred in failing to declare the order of the Commission void in that said order arbitrarily commanded [fol. 137] that rates on cotton be increased without the question of the reasonableness of such increases being considered or put in issue and without any evidence upon the reasonableness of such increased rates.

Two

The Court erred in its failure to hold that the order of the Commission finding undue discrimination between uptown and the so-called waterfront warehouses at the respective ports and the shippers owning and using such facilities was void since both took exactly the same rate.

Three

The Court erred in its failure to find the order of the Commission void because it attempts to equalize commercial conditions not in fact equal, is based upon commercial instead of transportation considerations, and results in a confiscation of the property of petitioners for the benefit of the interior and uptown warehouses.

Four

The Court erred in failing to hold that the order of the Commission was void because it had no jurisdiction or power to forbid the common carriers defendant before it to refund to the so-called waterfront warehouses the cost of moving cotton from their warehouses and placing it in ship's berths adjacent to said warehouses, because said order would of itself create a discrimination against the so-called waterfront warehouses in that the uptown warehouse owners would get the blanket rate for the entire haul of their cotton; while the so-called waterfront warehouse owners would pay the same plus the cost of moving it to the wharves and into ship's berths and because the Interstate Commerce Commission is without jurisdiction and power [fol. 138] to require the carriers to practice a discrimination.

Five

The Court erred in its conclusion that the order of the Commission as to allowances was merely negative and furnished no matter for injunctive relief.

Six

The Court erred in holding that the present contention is purely academic and specilative because said holding is contrary to and unsupported by the evidence in this: The undisputed evidence shows that under the order of the Interstate Commerce Commission the advantages which are due solely to the advantageous location of the so-called waterfront warehouses are changed to actual disadvantages, and that the so-called waterfront warehouses which chose their locations as an aid to the handling of cotton

are actually penalized for their business foresight and that the plaintiff's contention in this case is a real and substantial question.

Seven

The Court erred in its holding that under Section 3 of the Interstate Commerce Act it is only necessary that the rate prescribed be "just and reasonable to remove the discrimination."

Eight

The Court erred in its interpretation of the Act to Regulate Commerce in that it held that the term "just and reasonable" when applied to an action under Section 3 of said Act means "just and reasonable for the purpose of removing the discrimination" as contrasted with the same expression "just and reasonable" when used in connection with an action under Section 1, of said Act, which the Court defined as "just and reasonable per se."

[fol. 139]

Nine

The Court erred in that it failed to hold that the Commission exceeded its powers by prescribing a specific rate without any hearing upon the reasonableness thereof and without evidence as to its reasonableness.

Ten

The Court erred in failing to find that the requirements of a full hearing in Section 15 of the Act to Regulate Commerce made necessary a hearing upon the reasonableness of the rates as a condition precedent to the power of the Commission to find that rates were reasonable or to order increased rates whether or not they should be found by the Commission to be reasonable and that no such hearing was held in the proceedings in question.

Eleven

The Court erred in failing to hold that as the domestic rates to the Ports had been fixed by the Commission after full hearing as "maximum reasonable rates" the Commission had no power to increase such rates without a hearing

upon the reasonableness of the increased rates nor to increase such rates merely upon a consideration of the reasonableness for the purpose of removing an alleged discrimination.

Twelve

The Court erred in its failure to hold that since the reasonableness of rates was not at issue the Commission had no power to prescribe the rates in question.

Thirteen

The Court erred in its failure to hold that since there [fol. 140] was no substantial evidence to support a finding that the rate prescribed was reasonable, the order went beyond the power of the Commission.

Fourteen

The Court erred in its holding that "there is ample evidence to support a finding that under the practice prevailing as to shipments to the ports a rate of 81 cents would be a just and reasonable rate to remove the discrimination existing under the two-rate plan."

Fifteen

The Court erred in failing to find that shippers of cotton to and through the ports could and in fact did avail themselves of both rates, the lower local rate and the higher export rate according as their convenience dictated.

Sixteen

The Court erred in that it failed to hold the order of the Commission finding unjust discrimination between plaintiff warehouses and the shippers owning and using them, and uptown warehouses and the shippers owning and using them, void as not sustained by the evidence since there can be no unlawful discrimination in view of the fact that the carriers maintain two bases of rates and services open to all alike, the one covered by export bills of lading and involving certain services and privileges, and the other covered by domestic bills of lading and involving a different character of services and privileges, and since the mere fact that for private and commercial reasons certain ship-

pers used one while others preferred the second could not render the maintenance of different rates for the different kinds of service unduly discriminatory as between the two classes of shippers.

[fol. 141] Seventeen

The Court erred in failing to hold that no unlawful discrimination had been shown between the rates applying on export shipments of cotton and rates applying on domestic shipments of cotton for local delivery at the ports, one being export or foreign commerce and the other being local or domestic commerce.

Eighteen

The Court erred in holding that petitioners could not seek the aid of the courts in preserving their rights, but, because of their participation in the proceedings before the Commission under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, the petitioners were limited to remedies which might be available under later proceedings which they might institute before the Commission.

Nineteen

The Court erred in finding that all parties to these suits participated in the proceedings before the Commission under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found because such finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the Manchester Terminal Corporation did not participate in any of the hearings before the Interstate Commerce Commission, and that it had been denied the right of a hearing before said Commission.

Twenty

The Court erred in its conclusion that the order of the Commission granting allowances to warehouses located away from the waterfront and the shippers using them in [fol. 142] lieu of transportation to and upon wharves and prohibiting carriers from making such allowances to ware-

houses near the waterfront and the shippers using them in lieu of transportation to and upon, near and adjacent to wharves, was merely a negative order and furnished no matter for injunctive relief.

Twenty-two

The Court erred in holding that for what plaintiffs have furnished other than transportation services they cannot recover in law, because said holding assumes that plaintiffs do not furnish any transportation services which the carrier is obligated to perform and because said assumption is contrary to and unsupported by the evidence in this: the undisputed evidence shows that under the terms of the carriers' tarriffs cotton may be stopped once in transit for the purpose of being concentrated under the protection of the through rate from origin to shipside and this privilege may be taken by the shippers at interior points or at the Ports. When the privilege is taken at the Ports, the terms of the carriers' tariffs provide that in lieu of the shippers requiring them to transport the cotton from the warehouses to shipside they will repay to the warehouses the cost of transporting cotton from said warehouses to shipside subject to certain maxima and the Court erred in failing to find that the so-called waterfront warehouses in pursuance to these tariff provisions transport cotton from said warehouses and place it in the adjacent ships berths in lieu of calling upon the carriers to switch said cotton from said warehouse to adjacent berths.

Twenty-three

The Court erred in holding that "it cannot make any legal difference whether the carrier performs a service continuously or after a stop for concentration allowed by its tariff or makes allowance in lieu, but only in lieu of trans-[fol. 143] portation," because said holding is contrary to and unsupported by the law in this: Under the law plaintiffs are entitled to equal and non-discriminatory treatment at the hands of the carriers and the practice of carriers and the Commission's order requiring the carriers to continue granting a transit privilege to interior and uptown warehouses whereby they transport cotton from interior points and uptown warehouses, their services in making delivery to said warehouses being complete, and later going

through the same service in transporting a similar quantity of cotton from said warehouses to and placing it in ships berths, but under the fiction that the movement is a through movement the carriers charge the shippers the shipside rate, or, in lieu of the carriers performing the second movement they allow and refund as in the case of uptown warehouses the cost of performing said service, but fail to grant and the Commission's order forbidding the carriers to grant a similar transit privilege to plaintiffs is unjustly discriminatory and unduly prejudicial to plaintiffs, and unduly preferential of the interior and uptown warehouses.

Twenty-four

The Court erred in its holding that the order of the Commission established one and the same rate to all warehouses located within the limits of the same switching district.

Twenty-five

The Court erred in that it failed to hold that the order of the Commission established a multi-rate plan to the same switching district under which the rate to each warehouse depended on its location with reference to the waterfront.

Twenty-six

The Court erred in holding that the only question for consideration was the rate established without regard to concentration privileges or allowances thereunder.

Twenty-seven

The Court erred in failing to find that the allowances [fol. 144] and privileges accorded by railroads at the ports in connection with shipments of cotton were part of the transportation service as described in the Interstate Commerce Act and necessarily were embraced in the order of the Commission undertaking to fix the rates and to regulate such services.

Twenty-eight

The Court erred in accepting the amount of the rate established as the sole index to the legality of the order and in refusing to consider the effect of the allowances permitted in diminishing the rate to uptown warehouses and the ship-

pers using them but prohibited to warehouses of plaintiff and shippers using their facilities, thereby depriving plaintiffs of the benefit of the free concentration privilege included in the rate in so far as it concerns cotton moved to ship's berth on wharves near to or adjacent to plaintiffs' warehouses.

Twenty-nine

The Court erred in that it refused to hold that the effect of the order of the Commission was to deprive the warehouses located near the waterfront, and the shippers using them, of the free concentration privilege on cotton moving to ship's berth on the near or adjacent wharves, which privilege is included in the rate prescribed, while allowing such privilege to warehouses in the interior and those located back from the waterfront, and the shippers using them.

Thirty

The Court erred in that it refused to hold the order of the Commission was discriminatory in that it granted allowances to back-from-the-waterfront compresses and the shippers using them for moving cotton which had not previously enjoyed a concentration privilege, except under a higher rate, to all wharves while refusing it to plaintiffs on cotton moved from their warehouses to ship's berth on, near, or adjacent wharves.

[fol. 145] Thirty-one

The Court erred in finding that large warehouses with compresses were erected on the waterfront at Houston, because said finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the so-called waterfront facilities consist of two separate and distinct classes of facilities,—one of which is a transportation facility in the nature of a public wharf where goods are interchanged for delivery to or from steamship lines, and the other consists of cotton warehouses where cotton is stored and merchandised but each of which is separate from the other and none of said warehouses are on the waterfront; it being necessary as a prerequisite of delivery to steamship lines that cotton be transported from points in the cotton warehouses to and placed in the steamship berths, no part of said service being performed by the steamship lines.

Thirty-two

The Court erred in its failure to hold that since the shipside rate included delivery of the cotton, by the carrier, in the ship's berth upon the wharf, the movement of cotton from warehouses near the waterfront to ship's berth across adjacent wharves was a substitute transportation service regardless of the means of transportation, and that an allowance therefor to the shipper performing same was lawful.

Thirty-three

The Court erred in failing to find that the Commission erred in finding that the transportation of cotton from plaintiffs' warehouses to ship's berth upon adjacent wharves constituted intra-plant service and that no allowance could lawfully be made by carriers for any part of such transportation service.

Thirty-four

The Court erred in its statement that the plaintiff warehouses were erected, and are located, on the waterfront because such finding is not supported by the evidence in the [fol. 146] case.

Thirty-five

The Court erred in its statement that the railroads had inaugurated the two rate plan in order to equalize the uptown facilities using domestic rates with interior compresses using export rates because such finding is not supported by the evidence in the case.

Thirty-six

The Court erred in finding that under the practice of these ports shipside delivery consists in delivery to within 200 feet of the ship's tackle, because said finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the steamship lines accept cotton only when it is delivered to and placed in steamship berths and that no part of the so-called waterfront warehouses at which cotton is stored and merchandised, forms any part of the steamship berths.

Thirty-seven

The Court erred in its statement of fact that the plaintiff warehouses and shippers can get their cotton to shipside 3½ cents cheaper than the interior and "uptown" facilities, and those using them, by using the domestic rate of 80 cents, because the undisputed evidence shows that the cost of moving the cotton from the warehousing facility to the ship's berth on the wharf facility is substantial, and in some cases greater than the cost of moving the cotton from uptown warehouses to the wharves.

Thirty-eight

The Court erred in failing to hold that the order of the Commission would deprive plaintiffs of the advantage of the location of warehouses owned or used by them, near the waterfront and penalize them therefor by permitting an allowance to uptown warehouses and shippers using such facilities for moving their cotton to shipside while holding it unlawful to grant such an allowance to plaintiffs.

[fol. 147] Thirty-nine

The Court erred in its failure to find that the granting of an allowance to the owners and users of uptown compresses and warehouses and its prohibition to the owners and users of plaintiffs' warehouses constitutes a confiscation of plaintiffs' property without due process.

Forty

The Court erred in concluding that the Commission had the power, in the state of the case presented by the record, to find a condition of undue prejudice resulting from the two-rate plan.

Forty-one

The Court erred in its failure to hold that the finding of the Commission that the relationship between the rates for city deliveries and shipside deliveries is unduly preferential of petitioners and unduly prejudicial to warehouses located at interior points and back from the waterfront, and the shippers using such facilities, is beyond its power because it is based upon commercial and other extraneous considera-

tions and not upon the services rendered by and the costs to railroads.

Forty-two

The Court erred in that it failed to hold the order of the Commission void as an attempt to equalize commercial conditions between various locations and merchants.

Forty-three

The Court, having found that in determining whether the rates established were discriminatory the only question for consideration was whether or not the rate was the same to all warehouses in the same switching limits, erred in not declaring the order of the Commission finding discrimination between the owners and users of uptown and waterfront warehouses void as based on commercial and other extraneous considerations since exactly the same rate applied to all.

[fol. 148]

Forty-four

The Court erred in that it failed to hold the order of the Commission void in that its order attempts to set up a system of rates based on commercial considerations which attempts to equalize the cost to varying persons and locations of getting to shipside without reference to transportation service or costs to the carrier.

Forty-five

The Court erred in its holding that if the owners and users of the so-called waterfront warehouses can have cotton delivered to their own warehouse facilities from which they can put the cotton to shipside it is no concern of theirs that the owners and users of an uptown warehouse get their cotton to shipside at the same transportation cost.

Forty-six

The Court erred in failing to hold that as the owners and users of all warehouses located in the same switching limit paid the same rate an order of the Commission finding undue discrimination between them was void as based on the cost to them of moving cotton to shipside.

Forty-seven

The Court having found that plaintiffs contributed nothing to transportation as such in building where they did, erred in that it failed to hold that the erection and use of their plants changed none of the transportation conditions surrounding the movement of cotton, but that only commercial conditions were changed and that these were not proper subjects for consideration by the Commission, and rendered its order void.

Forty-eight

The Court erred in that it failed to hold the order of the Commission void in that it disregarded additional services rendered export shipments under the export bills of lading.

[fol. 149]

Forty-nine

The Court erred in failing to hold that the Commission had no lawful power to compel the carriers to render without extra charge the additional services involved in transporting export shipments under export bills of lading.

Fifty

The Court erred in failing to hold that the Commission had no lawful power to compel the carriers to handle shipments moving under export bills of lading to shipside (exclusive of wharfage) at the same charge which was made for handling shipments under domestic bills of lading for local delivery to the warehouses at the ports, since the undisputed evidence shows that the shipments under export bills of lading involved additional services and privileges; such as additional free time, nominal demurrage charges, liberal average agreements, expedited movement, and miscellaneous services which were not required nor available under the tariffs covering shipments under domestic bills of lading.

Fifty-one

The Court erred in its failure to hold that the Commission had no power to prescribe a specific rate to remove an alleged unjust discrimination but only to enter an order in the alternative requiring the carriers to remove such discrimination.

Fifty-two

The Court erred in failing to hold that the 1920 amendment to section 15, paragraph 1, of the Act to Regulate Commerce did not confer upon the Commission power to prescribe a specific rate in cases of alleged unjust discrimination between shippers and localities under section 3 of the Act, but only in cases of destructive competition between railroads, and between railroads and water carriers.

[fol. 150] Fifty-three

The Court erred in holding that "if the rate established by the Commission is the same for all persons in the territory that is the end of the matter," because said holding is contrary to and unsupported by the evidence in this: the Commission required the carriers to accord one free concentration in transit privilege to the interior and uptown warehouses and also to the so-called waterfront warehouses in the cases where the cotton concentrated in said warehouses moved to wharves other than those adjacent to the so-called waterfront warehouses, or in lieu thereof it recognized the right of the interior and uptown warehouses to receive refunds from the carriers and required the carriers to pay said refunds, but denied the right of the so-called waterfront warehouses to receive and forbade the carriers to pay said refunds covering their cost of moving cotton from their warehouses to and placing it in ship's berths when this service was performed by the warehouses themselves or by other transportation agencies employed by them.

Fifty-four

The Court erred in holding that no ground for injunctive relief exists.

Fifty-five

The Court erred in holding that the temporary injunction heretofore issued should be recalled.

Fifty-six

The Court erred in dismissing the bill for want of equity.

Fifty-seven

The Court erred in its failure to hold that the temporary injunction should be made permanent.

Wherefore Plaintiffs pray that said decree may be reversed.

Fulbright, Crooker & Freeman, R. L. Botts, C. R. Bullard, James J. Shaw, Attorneys for Plaintiffs. R. C. Fulbright, of Counsel.

[fol. 151] [File endorsement omitted.]

[fols. 152-154] Bond on appeal for $250.00, approved and filed January 11, 1928, omitted in printing.

[fol. 155] In United States District Court

[Title omitted]

Affidavit of J. H. Tallichet—Filed July 14, 1928

Before me, the undersigned authority, on this day personally appeared J. H. Tallichet, to me well known, who deposes and says,

That he is a member of the firm of Baker, Botts, Parker & Garwood, Attorneys for the plaintiff Texas & New Orleans Railroad Company in the case of Texas & New Orleans Railroad Company, et al, vs. United States of America, and Interstate Commerce Commission, which was tried before the District Court of the United States of America, for the Southern District of Texas, Houston Division under the Court's Equity Docket No. 311; that all of the plaintiff Railroad Companies in the said Equity Docket No. 311, or their legally constituted officers were cognizant of the fact that plaintiffs in the case of Alexander Sprunt & Son, Inc., et al. vs. United States of America, and Interstate Commerce Commission, which was tried in the District Court of the United States for the Southern District of Texas, Houston Division under the Court's Equity Docket [fol. 156] 310 which was consolidated by order of the Court

with its Equity Docket 311, intended to take an appeal from the decision of said Court prior to the time the said appeal was taken and that the said plaintiffs in Equity Docket 311 decided not to appeal from the said judgment of the said Court and that said plaintiffs in Equity 311 have taken no steps whatever toward the perfection of an appeal from said judgment.

J. H. Tallichet.

Sworn to and subscribed before me by said named affiant, this 10th day of July, A. D. 1928. O. G. Kehrer, Notary Public, Harris County, Texas. (Seal of Notary Public, County of Harris, Texas.)

[File endorsement omitted.]

[fol. 157] In United States District Court

[Title omitted]

Affidavit of W. L. Cook—Filed July 14, 1928

Before me, the undersigned authority, on this day personally appeared W. L. Cook, to me well known, who deposes and says,

That he is a member of the firm of Andrews, Streetman, Logue and Mobley, Attorneys for plaintiff Beaumont, Sour Lake & Western Railway Company in the case of Texas & New Orleans Railroad Company, et al., vs. United States of America, and Interstate Commerce Commission, which was tried before the District Court of the United States of America, for the Southern District of Texas, Houson Division under the Court's Equity Docket No. 311; that all of the plaintiff Railroad Companies in the said Equity Docket No. 311, or their legally constiuted officers were cognizant of the fact that plaintiffs in the case of Alexander Sprunt & Son, Inc., et al. vs. United States of America, and Interstate Commerce Commission, which was tried in the District Court of the United States for the Southern District of Texas, Houston Division under the Court's [fol. 158] Equity Docket 310 which was consolidated by order of the Court with its Equity Docket 311, intended

to take an appeal from the decision of said Court prior to the time the said appeal was taken and that the said plaintiffs in Equity Docket 311 decided not to appeal from the said judgment of the said Court and that said plaintiffs in Equity 311 have taken no steps whatever toward the perfection of an appeal from said judgment.

W. L. Cook.

Sworn to and subscribed before me by said named affiant this 10th day of July, A. D. 1928. Louise T. Meinken, Notary Public, Harris County, Texas. (Seal of Notary, County of Harris, Texas.)

[File endorsement omitted.]

[fol. 159] In United States District Court

[Title omitted]

Order Granting Extension of Time to File Record—Filed Feb. 2, 1928

This cause came on this day to be heard on the petition of Alexander Sprunt & Son, Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford Crump & Company, Plaintiffs and Intervenor Manchester Terminal Corporation, in the above styled cause, praying for an enlargement of time in which to file the record in this cause in the Supreme Court of the United States.

And it appearing to the Court that the record contains many exhibits and is a large record and that the plaintiff and intervenor ill hardly have time to file the same in the Supreme Court of the United States by the 13th day of February A. D. 1928 which is the time required by law and that opposing counsel have agreed thereto—

It is thereupon ordered, adjudged and decreed that the said plaintiffs and intervenor and appellants be and they are hereby allowed in addition to the thirty (30) days allowed them by law, Ninety (90) days from February 13th

[fol. 160] 1928 in which to file the record in this cause in the Supreme Court of the United States.

It is therefore so ordered, adjudged, and decreed this the 2nd day of Febry. A. D. 1928.

J. C. Hutcheson, Jr., District Judge.

[File endorsement omitted.]

[fol. 161] In United States District Court

[Title omitted]

Order Extending Time for Filing Transcript of Record to July 1, 1928—Filed May 8, 1928

For satisfactory reasons appearing to the court, and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court pursuant to the appeal sued out, is extended to the first day of July 1928.

Rufus Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge, by J. C. H., Jr.

Consented to.

Fulbright, Crooker & Freeman, R. C. Fulbright, for Plaintiffs. J. Stanley Payne, for Interstate Commerce Com'n. Blackburn Esterline, for U. S. A. A. L. Reed, for Intervenors Arkansas Cot. Trade et al. C. B. Cochrane, Oklahoma Cotton Exchange et al. Mart H. Royston, for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 162] In United States District Court

[Title omitted]

Order Extending Time for Filing Transcript of Record—Filed June 22, 1928

For satisfactory reasons appearing to the court, and by consent of the parties hereto, the time for filing the record

in this cause in the Supreme Court is extended to the first day of August 1928.

Rufus E. Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A. J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Com'n. A. L. Reed, Counsel, Arkansas Cotton Trade Ass'n et al., Intervenors. C. B. Cochran, for Oklahoma State Cotton Exchange. Mart H. Royston, for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 163] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD TO SEPT. 15, 1928
Filed July 28, 1928

For satisfactory reasons appearing to the Court, and by consent and agreement of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the 15th day of September A. D. 1928, and plaintiffs are granted permission to withdraw præcipe heretofore filed in this cause on the 14th day of July, 1928, together with narrative and proof of service.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs & Plaintiff Intervenors. J. Stanley Payne, for Defendant Interstate Commerce *Commerce* Com'n. Alfred A. Wheat, for the Attorney General, for the United States. A. L. Reed, Arkansas Cotton Trade Ass'n, Intervenor. C. B. Cochrane, Oklahoma Cotton Exchange. Mart H. Royston, Galveston Cotton Exchange and Board of Trade, Galveston Chamber of Commerce.

[File endorsement omitted.]

[fol. 164] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO OCTOBER 15, 1928—Filed Sept. 14, 1928

For satisfactory reasons appearing to the Court and by consent and agreement of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the 15th day of October, A. D. 1928.

J. C. Hutcheson, Jr., District Judge.

Sept. 12, 1928.

Consented to.

A. L. Reed, Counsel Arkansas Cotton Trade Ass'n. C. B. Cochran, Counsel Oklahoma State Cotton Exchange. Fulbright, Crooker & Freeman, Attys. for Plaintiffs. J. Stanley Payne, Ass't Chief Counsel, Interstate Commerce Com'n. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A.

[File endorsement omitted.]

[fol. 165] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO NOV. 15, 1928—Filed Oct. 13, 1928

For satisfactory reasons appearing to the Court, and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the Fifteenth day of November, 1928.

Rufus E. Foster, Circuit Judge, by J. C. Hutcheson, Jr., District Judge. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A. Okla. State Cotton Exchange, by C. B. Cochran. Callaway & Reed, by Carl B. Callaway.

[File endorsement omitted.]

[fol. 166] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO DEC. 15, 1928—Entered November 15, 1928

Ordered, that the time for filing the record in this cause in the Supreme Court, be extended to the 15th day of December, 1928.

(Telegram from Judge from Laredo, Texas, November 15, 1928.)

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO DEC. 31, 1928—Filed Dec. 13, 1928

For satisfactory reasons appearing to the Court and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the thirty-first (31) day of December, 1928.

Rufus Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, Attys. for Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission. Elmer B. Collins, Special Ass't to the Atty. Gen'l, for United States. A. L. Reed, Counsel for Arkansas Cotton Trade Ass'n et al., Intervenors. C. B. Cochran, Counsel for Oklahoma State Cotton Exchange. Mart H. Royston, Counsel for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, L. C. Masterson, Clerk of the District Court of the United States, for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record, assignments of error and all proceedings had in the case, as called for in the Præcipe for Transcript on pages 1 and 2 of said Transcript, in the above entitled and numbered cause, as the same now appears on file and of record in my office, and that in accordance with the stipulation as to original exhibits, and the order thereon, which said order appears on page 952 of the Original Statement of Evidence, Vol. 2, the original Exhibits referred to in said stipulation accompany this transcript.

To certify which, witness my hand and the Seal of said Court, at Houston, in said District, this the 27th day of December, A. D. 1928.

L. C. Masterson, Clerk United States District Court, Southern District of Texas, by M. Anderson, Deputy. Seal United States District Court, Southern District, Texas.

[fols. 169-174] Citation, in usual form, showing service on C. B. Cochran et al., omitted in printing.

[fol. a] [File endorsement omitted]

[fol. 1] IN UNITED STATES DISTRICT COURT

In Equity. No. 310

ALEXANDER SPRUNT & SON, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Statement of the Evidence—Filed Dec. 17, 1928

This cause came on for hearing on July 12th and 13th, 1927, before the Honorable Rufus L. Foster, Circuit Court

Judge, Honorable J. C. Hutcheson, Jr., District Judge and Honorable Louis H. Burns, District Judge. The plaintiffs in Equity 310 were represented by their solicitors R. C. Fulbright and R. L. Batts; those in Equity 311 were represented by their solicitor, J. H. Talichet. The United States was represented by T. M. Logan Bruns, Assistant United States Attorney; the Interstate Commerce Commission by J. Stanley Payne, its Assistant Chief Counsel; the intervenor, the Galveston Chamber of Commerce and Galveston Cotton Exchange by its solicitor, Mart H. Royston; the intervenor, the Manchester Terminal Corporation by R. C. Fulbright; the intervenor Oklahoma City Cotton Exchange, by C. B. Cochran; the intervenors, Texas-Oklahoma Compress As-
[fol. 2] sociation and Arkansas Cotton Trade Association by its counsel, A. L. Reed.

Thereupon the Galveston Cotton Exchange and Galveston Chamber of Commerce sought and obtained leave of the Court to intervene through its solicitor Mart H. Royston. The Manchester Terminal Corporation having first obtained leave of the court, filed its intervention.

Offers in Evidence

There was offered and received in evidence the verified bill of complaint and exhibits A, B, C, D and E thereto together with exhibits marked 1 to 17 which were as follows:

Exhibit Nos. 1 and 2. Affidavits of James J. Shaw as to the issues and evidence before the Interstate Commerce Commission in Dockets 13991 and 14940.

Exhibit No. 3. An affidavit by W. L. Walker, Manager of Alexander Sprunt & Son, Incorporated as to damages.

Exhibit No. 4. An affidavit of W. L. Clayton of Anderson, Clayton & Company, which controls the Houston Compress Company, as to damages.

Exhibit No. 5. An affidavit of C. F. Stockmeyer, Secretary of Sprunt & Company, which owns the stocks of the Turning Basin Compress Company as to damages.

Exhibit No. 6. The joint affidavits of S. G. Reed, Assistant Traffic Manager of the Texas & New Orleans Railroad Company, and H. Booth, General Traffic Manager of the International-Great Northern, St. Louis, Brownsville & Mexico and other Missouri Pacific Lines as to issues and evidence before the Commission.

Exhibit No. 7. An affidavit by S. G. Reed containing testimony and exhibits from the record before the Interstate Commerce Commission in Dockets 13991 and 14940.

[fol. 3] Exhibit Nos. 8, 9, and 10, Affidavits of J. K. Moore relating to the issues and evidence before the Interstate Commerce Commission in Dockets Nos. 13991 and 14940, and in contravention of affidavits made by complainants as to damages.

Exhibits Nos. 11, 12 and 13. Affidavits of I. M. Griffin relating to the issues and evidence before the Interstate Commerce Commission in Dockets Nos. 13991 and 14940, and in contravention of affidavits made by complainants as to damages.

Exhibit No. 14. Petition for Modification of Order of Interstate Commerce Commission, Docket 11965.

Exhibit No. 15. Petition for Modification of Order of Interstate Commerce Commission, Docket 14940.

Exhibit No. 16. Supplemental Petitions for Postponement of Order of Interstate Commerce Commission in Docket 14940.

Exhibit No. 17. Petition for Reopening Dockets 13991 and 14940.

It was stipulated by all the parties that the cause be submitted on final hearing on the pleadings in the cause, the exhibits received in evidence and the certified copy of the transcript of the evidence before the Interstate Commerce Commission in its said Dockets No. 13991, Weatherford, Crump & Company v. Abilene & Southern Railroad Company, et al., and No. 14940, Application of Rates on Cotton to Gulf Ports.

Thereupon plaintiffs offered in evidence the certified copy of the transcript of the evidence and the exhibits offered in evidence before the Interstate Commerce Commission in said Docket Nos. 13991 and 14940, of which transcript the following is a condensed statement in narrative form:

[fol. 4] **Narrative of the Proceedings Before the Interstate Commerce Commission in Docket 13991**

WEATHERFORD, CRUMP & COMPANY, Complainants,

vs.

ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants

At Houston, Texas, October 24, 1922

[fol. 5] WITNESS JAMES WITHEROW

My name is James Witherow. I am Joint Freight Agent for the M. K. & T., I. & G. N., G. H. & H. Railroad Companies at Galveston. I have held that position about three years. My companies during the last two or three years have been receiving cotton which was ordered switched to the Galveston Wharf Company and delivered direct to the Shipside (R. 14) Density Compress Company located on the water front. Some of this cotton moved on through bills of lading, and some of it moved on local domestic bills of lading and was not marked export. At the present time, and during the last two years, there have been two rates to Galveston from Texas points, one authorized by the Railroad Commission to cover shipments for city delivery at Galveston, the other published and filed with the Interstate Commerce Commission to cover intrastate shipments. When bills of lading do not read for export, the State rate is assessed (R. 15). When shipments are billed on through bills of lading, for some foreign port the export rate would be assessed. If the domestic bill of lading would read for export, we would assess the interstate rate also (R. 16).

On a shipment that moved from Dallas to Pier 10 to the Shipside Density Compress, as compared with another shipment moving to the same pier but moving on a local bill of lading marked for export, there cannot be very much difference in the service performed, it would cost us more to handle the export shipment. Our switching rates on the export shipment would be the interstate or export [fol. 6] switching rate, which would be $4.05. That is the absorption switching rate, $4.05, as against the State rate which is at present $3.15. Switching is performed by the

Galveston Wharf Company, and the railroads (R. 17) would have to absorb that charge.

The demurrage regulations are more favorable to a shipper using the export bill of lading or through export bill of lading. On a through export bill of lading, the free time allowed is ten days, and on a domestic bill of lading reading for export, four days is allowed (R. 18). The shipper could take out a through bill of lading to the Continental point if he wanted to. The railroads have been absorbing the unloading charges at piers on shipments moving under the export category, and when the bills are properly supported we absorb that on state business, but we would not do that prior to October 1st or September 1st.

The actual physical handling is the same as far as the railroads are concerned, we have to pay out more and we have to give more attention and there is more labor attached in the handling of the through movement. I have no personal knowledge of what becomes of cotton delivered to the Shipside Density Compress (R. 19).

The rail rate is per 100 pounds, there are 75 to 100 bales in a car, the switching rate is so much per car, the unloading rate which we absorb at the piers is say 5½¢ a bale, so much a bale, and therefore it can all be reduced to so much per 100 pounds after all. I have not figured out the expense incurred on export traffic that is not incurred on domestic traffic. Taking into consideration the advantages that are gained by the demurrage application on [fol. 7] through bill of lading cotton, I would think it approximately 3½¢ (R. 20).

I have not personally made any attempt to find out what disposition is made of the cotton delivered to the Shipside Density Compress, because on local cotton delivered to a Shipside press we secure a receipt from a local institution as soon as we receive a receipt from some inland press representative. On cotton going to piers and on which we assess the export rate, we will not accept a receipt from any one else other than an authorized representative of a steamship company. If we have positive knowledge that a shipment was actually exported immediately, we would not attempt to collect the undercharge any more than we would on cotton delivered (R. 21) to a compress aways from the bay front, such as Moody's or Kempner's.

The actual platform of the Shipside compress has not much storage capacity, but the Galveston Wharf Company uses some of its pier space for storage, and it is possible that they store some of their cotton at piers adjacent to shipside compress.

Cross-examination:

During the period covered by this complaint the interstate switching rate of the Galveston Wharf Company was $4.50 per car. It is now $4.05 per car due to the reduction (R. 22). The Intrastate rate was $3.15, just as it is now. There was a difference of $1.35 in the switching, as against .90¢ now.

[fol. 8] WITNESS C. T. KENNEDY

My name is C. T. Kennedy. I am Local Freight Agent for the Southern Pacific Line at Galveston. I filled that position for six years (R. 23). The testimony of Mr. Witherow will apply in practically all cases to the shipments handled by our line. There are some differences with regard to demurrage charges. The demurrage on local shipments is progressive, while on exports it would not be. On a car of cotton for the Shipside High Density, after the fourth day it would have a $5.00 a day demurrage charge while it would be only $1.00 a day if for export. That would amount to possibly $20.00 difference on a car. We have two days free time on local business, and the charge is $2.00 after the second day, and $5.00 after the fourth day (R. 24), whereas, it is $1.00 a day after the free time on export business. We are handling considerable cotton at Galveston being delivered to the Shipside High Density Compress on which we are assessing the base rates.

Cross-examination:

At times there is considerable delay, and the difference in demurrage is a real advantage to the man shipping on the through (R. 25) bill of lading. That condition prevails on the other lines as well.

If we had absolute information that a shipment delivered on a domestic bill of lading was exported immediately,

I would take it up with the General Freight Agent or somebody about what rates we should assess (R. 26). When we get a receipt for the shipment delivered to a Shipside [fol. 9] Density Compress, we are put to no additional terminal expense and the switching charges are less and the cars are worth a good deal of money this time of the year. I never attempted to find out what became of the cotton that was delivered to the Shipside Compress, and I have no instances in mind where the rating was changed because it was learned that the cotton was in fact exported. Weatherford, Crump & Company had some cotton moved through the Shipside press and paid the undercharges, but the bills of lading read "for export" (R. 27), and we made delivery to the connecting carrier. The cotton never got out of the possession of the carriers at all (R. 28).

If a bill of lading did not say "for export," we assessed the domestic rate. If the shipper later told us that the shipments were actually exported and asked us to render an undercharge bill, naturally we would.

The demurrage rules favor the shipper on through bills of lading and also on local bills of lading for export.

WITNESS A. W. DUNHAM

My name is A. W. Dunham. I am agent for the Gulf, Colorado & Santa Fe Railway at Galveston, Texas. I have held that position since 1907, except for a year and four months. My company has delivered cotton to the High Density Compress (R. 30). Assuming that the traffic moves from Texas points, we charge the intrastate rate if it is billed locally or delivered to a Shipside Density Compress.

I have made no attempt to ascertain what disposition is made of the cotton delivered to the density compresses. [fol. 10] I do not recall that it was ever called to our attention that any of this cotton was being exported immediately or that we ever attempted to collect any undercharges. It might have been done (R. 31). Cotton delivered to Shipside Density Compress and cotton delivered — wharves adjacent thereto c-n be unloaded from cars placed alongside of each other upon the main track (R. 32).

WITNESS H. BOOTH

My name is Horace Booth. I am Traffic Manager for the International & Great Northern Railway. I have held that position about ten years. During the past three years my Company has been accepting shipments moving to Galveston delivered to the Shipside Density Compress on a city delivery rate. We have never attempted to follow the cotton beyond the high density compress. I do not know that we could collect the export rate if we had positive knowledge that the shipments were being exported immediately. We don't know what the intention of the shipper is when he takes delivery there (R. 33). If we had knowledge that it was his intention to export it, we would apply the export rate.

There are no cotton mills in Galveston. My line does not haul any appreciable amount of high density compressed cotton out of Galveston by rail. A good deal of cotton changes title at Galveston. I have no means of knowing whether or not cotton is sold there after reaching this compress or any other (R. 34) compress. We never attempt to secure information from the shipper that the cotton is intended for export. The shipper could get all those [fol. 11] charges back by paying the export rate and availing himself of the transit privileges—the refund. I don't see any alvantage or disadvantage to anybody in that arrangement (R. 35).

It is my opinion that all the cotton that is given a high density treatment on the wharf goes out by water. There would be no advantage in high-densitying cotton going to interior destinations. It would only be an additional expense (R. 36). There is a substantial amount of cotton of numerous shippers located at Galveston and in the interior of Texas whic- is concentrated on the premises of the cotton concentration company. They might reship that out of Galveston, and it might be exported to the Pacific Coast. In any of these cases the shippers take possession of the property and it is out of our possession (R. 37).

WITNESS ARTHUR H. FONDA

My name is Arthur H. Fonda. I am Traffic Manager of the Shipside Density Company, and have been since Sep-

tember, 1920. I have a general knowledge of the location of the six compresses located at Galveston. I presume it is a fact that for the last two or three years we have had two legally established rates to Galveston from interior points, one a city delivery rate and the other an export rate (R. 39). Cotton compressed by us at Galveston is handled in various ways. One is for immediate delivery to the pier, another is for loading into cars for shipments to New Orleans and San Francisco, another is for indefinite storage, another is for transfer of ownership. I do not know whether it is a fact that there is cotton being [fol. 12] billed to Galveston on city delivery rate which is being immediately delivered to various steamship lines after being compressed by our company. It is a fact that our company put out circular letters to the interior cotton shippers that by billing their cotton to Galveston on the local rate there would be a saving in the inland freight (R. 40). The advantages of the local rate vary at different times of the year. In the month of December I would tell the shipper that he would save about 3½ cts. per 100 pounds by letting us compress his cotton at shipside instead of letting someone else do it (R. 41). I mean someone else in the interior, at Houston for instance.

The compressing we do is given only for the purpose of moving the cotton ultimately by steamer to a foreign destination. A good deal of cotton is compressed at Galveston even when going to domestic destinations in the United States, for the purpose of doing patching in order that a shipper may secure the tare which is called for by the terms of his sale (R. 42). The compressing that we do, high density compression, is different from the compression at the intermediate points in the inland. We put the cotton down to about 34 pounds per cubic foot density, while in the interior at the Standard compresses the density is about 22½ pounds. The density at the gin is about 10 or 12.

The saving to the shippers of 3½ cts. per 100 pounds by shipping his cotton to us for compression is brought about by reason of the fact that we include in (R. 43) our compressing charge a price for delivery of the cotton at ship- [fol. 13] side and by the fact that we were willing to make delivery of his cotton at a price which is in line with the

cost of handling it, and that we make him a very attractive compress rate so that he can put the business to us.

I do not know what our competitors are charging for compression at Houston. The local rate from Dallas to Galveston is 80 cents. *The local rate from Dallas to Galveston is 80 cents.* I do not know whether that permits compression in transit at Houston (R. 44). Generally speaking we have nothing in mind upon which to base the statement that we can save the shipper 3½ cts. We do not act as the forwarding agent or export agent of the shipper.

Shipside delivery means placing the cotton within reach of the ship tackle. The cost of doing that is about 18 cts. per bale. Originally we figured that the shipper was paying us 22 cents a bale for delivery.

Approximately 85 percent. of the cotton that moves through our compress is ultimately exported. If cotton is compressed at Houston and exported through the same boat, I do not know what additional charges the shipper has to pay at Galveston above what we pay. (R. 46.) Some of the cotton we compress goes to San Francisco, some of it to New Orleans, some of it to the Carolina mills. Of the latter, some of it goes by water and some by rail, possibly fifty per cent. of it being exported through the port of Galveston.

The shipper pays the demurrage charges at Galveston on [fol. 14] shipments of cotton consigned locally for delivery to our compresses. (R. 47.) My company stores a limited quantity of cotton on our platforms, about 10 per cent. (R. 48). Generally such cotton is not stored very long, usually only over night for our own convenience. As soon as it is compressed it is delivered to somebody. (R. 49.) About fifty percent of it goes to the boat for export and the other goes to some other point. Substantial amounts go to the New England Mills by the coastwise line from Galveston. Generally we know what disposition is to be made of the cotton before it reaches Galveston. Some of our delivery to the ship is as much as 2½ miles, and I would think that our average delivery (R. 50) would be somewhere around a quarter of a mile. That delivery to some other dock is effected usually by drayage and by car. We have a per car switching rate. It is an intra-city switching rate. Our Company absorbs all of the switching charge, but we

consider the cost of delivery in making the charge which we make to the shipper. I do not know that our Company has ever made any charge to the shipper for storage on cotton exported.

At the present time we charge the shipper 18 cents a bale for delivery to the pier, which is substantially but not always exactly the cost of such delivery. In delivering to a ship at our own pier on which the compress is located, we generally use a hand truck, but sometimes we use drays. (R. 53.) The charge for that service on all the cotton we handle will average about 18 cents a bale. The shipper does not know this service costs him; all he sees is our bill for compression. If a carrier overcharged for the switch- [fol. 15] ing movement between our compress and the ship's berth, the shipper would not know anything about it. Since the First of September this year, it is true that our rate to the shipper is the same regardless of the fact whether the compressed cotton is delivered on the pier or whether it is delivered two miles away. (R. 55.) From November 1st, 1921, down to September 1st, 1922, we sometimes made an extra charge when we found it advisable to handle cotton by drays other than to attempt to handle it by immediate delivery.

WITNESS V. R. ASTON

My name is V. R. Aston. I am Assistant Traffic Manager of Weatherford Crump. I have held that position for the past year and a half. We, the complainants in this case, contend that the present rate situation in handling export cotton through the Port of Galveston through compresses located on the water front is both a discrimination as to location and as to rates, and violates thereby Section 1, 2, and 3 of the Acts to Regulate Commerce and has resulted in unreasonable public export rates from Texas points to Galveston. (R. 57.) This discrimination began during the year 1920, when the Galveston Wharf Company constructed six high density compresses adjacent to the various piers handling export cotton.

[fol. 16] ("Complainant's exhibit #1, Witness Austin" received in evidence.)

Exhibit #1 shows the location of the six high density Compresses, on the Galveston water front, the piers served by them, and the track number upon which cotton intended for these Compresses is originally ordered placed. (Record 58). Section A, the Press known as Pier 10, serves piers 10, 11, 15, 16, 18 and 21. There is a track on each side of the pier, so that cotton may be unloaded on either side. (Record 59). These compresses are located on the wharves of the Galveston Dock Company, and the carriers under the through rate to Galveston, make delivery at these piers. The Shipside Presses themselves order the cars placed on the different tracks. The cotton is consigned to the Shipside Density Compress from point of origin. (Record 60).

Between Compress "A" and Compress "B" there is a long stretch of wharfage. They have piers between the two, and if cotton is loaded to a ship at those piers, it would be necessary to move the cotton from Compress "A" or Compress "B". The distance between the two is about one mile and one-half. (Record 62). Each compress naturally serves the piers adjacent to it, but there may be exceptions, (Record 63), when there is a large amount of cotton to be handled hurriedly. (Record 64.)

The merchant shipping cotton from the interior to Galveston, has his own broker or agent at Galveston, who receives that cotton, as a rule, and attends to the placing of it. (Record 65).

Quite a number of cotton exporters throughout the State of Texas bill their shipments to Galveston on local bills of lading, consigned to themselves, their freight broker, or the Shipside Density Compress. That cotton usually moves standard compressed from interior points. When it arrives at Galveston it is immediately ordered switched di-
[fol. 17] rect to one of the six high Density Compresses and there compressed to high density of about 32½ or 34 lbs. per cubic foot. (Record 67). It is then delivered by the Compress as a rule to the various Steamship Lines. On shipments moving to Shipside Density Compress the shippers have been, and are now, paying the intra-state or city delivery rates. This rate at the present time from Texas common points to Galveston is 80¢ per 100 lbs. The ship-

per also pays a 2¢ wharfage charge. (Record 68). The shippers handling cotton in that way get an 82¢ rate to the Shipside. There is always a wharfage charge on anything going over the wharf. (Record 71).

During the early part of 1921 our attention was called to the fact that other cotton exporters were taking advantage of the intra-state city delivery rate on shipments moving to Galveston for export, and since the carriers refused to remove the discrimination, our firm decided it would also be just and reasonable for us to high density our export shipments in Houston and move same to Galveston upon the same intra-state city delivery rate in a high densitied condition, shipments to be unloaded directly to pier, although handled by the carriers at Galveston in the same manner. To deny this to us would be a violation of Section 1, and also of Sections 2 and 3. (Record 73). The carriers immediately advised us that it would be necessary for us to pay the published export rate, which was and is 3½¢ higher than the intra-state city delivery rate being paid by our competitor. We finally paid the undercharges on shipments as were billed by ourselves at the intra-state city delivery rate.

I offer in evidence a copy of a letter from Mr. Horace Booth, Traffic Manager of the I. & G. N. (Record 73). Shipments made by Weatherford Crump & Company were consigned to the Shipside Density Compress Company, and they took possession of the cotton as our Agent. (Record 74). Another part of the letter refers to cotton sent ship-
[fol. 18] per's order, notify D. Stuart Godwin. It was to be high densitied and loaded down at the pier. This letter is offered as Exhibit #2.

Exhibit #3 is another letter from Mr. Booth, dated June 18th, 1921, and has reference to a number of under charged bills on cotton which we moved through Galveston after it had been high densitied at Houston (Record 75) and shipped direct to the pier for export. The purpose of this is to show that we had to pay the inter-state rate.

Exhibit #4 is a letter dated January 13th, 1921, from Mr. D. W. McLeod, Auditor of the Santa Fe, which shows that the inter-state rates apply on our shipments that move to Shipside for export where we had the cotton compressed in transit at Houston. (Record 76). Mr. McLeod states in

this letter, that the domestic rates can only be applied when shipments are taken possession of at Galveston, or where they move to Galveston for high density or other consentration purposes. (This was objected to by Mr. Ross as an interpretation by the Witness, and the objection was noted).

These letters from Mr. Booth are conclusive evidence that the carriers have based their application of the intrastate city delivery rate on the fact that the cotton moves to Galveston standard compressed. (Record 77). It is our position that the rate we pay is unreasonable under Section 1. We pay under charged bills to all the rail carriers on all our shipments which have moved to Galveston under the intra-state city delivery rate, (Record 79) regardless of whether or not the shipments move direct to Shipside or to the high density compresses. There is absolutely no difference in the service performed on shipments moving [fol. 19] direct to piers as compared with the shipments moving to the high density compresses.

Exhibit #5 is to show the manner in which a car of cotton is handled coming to Galveston billed for immediate export, delivered at the pier, and the similarity of its handling to the handling of a car delivered to the Shipside Density Compress Company under the intrastate rate. (Record 80.) "A" represents a car of cotton from Texarkana, Texas, we will say, billed to Galveston for export. The rate you pay from Denison to Galveston, the export rate, being 83½ cents plus the 2 cent wharfage charge. "B" represents a car of cotton from the same point of origin billed on a local bill of lading to shipside density compress city delivery rate. Here the rate is 80 cents plus the 2 cents wharfage charge, making 82 cents. This exhibit merely shows that a car of cotton coming in at this compress on the export rate will be loaded direct to the pier and be under the intrastate city delivery rate, the cotton is unloaded there to the compress, and then direct from the compress to the pier. (R. 80-81) It now appears that the Galveston shipping interest and the (Record 81) carriers have accepted the intra-city delivery rate as the delivery rate on which export cotton for delivery to the Galveston Wharf Company to be placed at Compresses lo-

cated on the water front, while they are insisting that cotton not compressed on the water front at Galveston, should bear the published export rate, which is 3½¢ higher than the city delivery rate. (Record 82).

(The witness offered in evidence a circular letter sent out by H. L. Zeigler, an Ocean Freight Broker of Galveston, dealing with the handling of export cotton. The objection of Mr. Ross to this evidence was sustained.)

(A similar letter sent out by the Shipside Density Com-[fol. 20] press Company, was offered, and the objection also sustained).

Cross-examination:

The basis of my statement to the effect that the carriers [fol. 21] accepted as reasonable the intra-state rate fixed by the Texas Railroad Commission, is that the carriers would have made objections to it otherwise. I do know that the rate was put in under protest of the carriers at the time (R. 87).

The Weatherford Crump Company are complaining only in regard to shipments moving through compresses at the water front. Compresses back of the water front are not in issue at all. We have a compress at Houston, and we concentrate cotton at that point. We pay the 80¢ rate there. The compress at Houston is a high density compress and is located at the Shipside (R. 89). We concentrate cotton at Houston, and very often it is stored for considerable time before it is shipped out, because we may not need to ship that particular grade. The situation at Galveston is entirely different (R. 92). The cotton is classed and graded into several different grades at Houston, and usually goes out in 150 bale lots of a certain grade and a certain staple. I do not know whether the shipments that move to Galveston are graded and classed there (R. 93). The Weatherford Crump shipments were of a certain grade and class and there was nothing to be done to them at Galveston. If a bale was in bad order it would have to be reconditioned at Galveston (R. 94). A shipper would not assemble his cotton at that compress in Galveston.

We ship some cotton by boat from Houston (R. 95). We deliver it to the receiving shed by trucks. The Turning Basin Compress makes the delivery for us. I do not know

who owns that compress. We handle Cotton through it, as well as Spindler & Company and several other inland shippers (R. 96). A very large part of the business of that compress is Weatherford Crump business. We grade our cotton at the shed which belongs to the Turning Basin Compress Company (R. 97). On a shipment from the interior [fol. 22] to that compress, if the shipment was for export the export rate would apply, and if it was billed locally to the compress in Houston, the intra-state rate would apply. There is no difference to the rate situation in Houston and in Galveston (R. 100). The Texas common point rate applies to Houston and Galveston alike, up to within 200 miles (R. 101).

The distance from the compress in Houston to the side of the ship will average about 300 feet (R. 102). The average distance from the compress to the side of the ship at Galveston is much greater than it is from the compress to the side of the ship at Houston. Weatherford Crump & Company pay the domestic rate on Cotton concentrated at the high density compress at the Turning Basin, Houston, Shipside, from interior points, when delivered to vessels at that point. The Concentrater at Dallas shipping to the compress at Houston for compressing and reconditioning and delivery to the ship, would have to pay the export rate (R. 104).

WITNESS R. V. GILLESPIE

We are not attempting to raise any question as to the handling of cotton at compresses back of the water front at Galveston. We feel that there should be one rate on cotton going to the Galveston wharf for export and only one rate. We withdraw any part of our complaint which makes reference to the reasonableness of the (R. 107) rate under section 1. We attack the rate under section 1 as to the parity between the two rates (R. 108). Any cotton man is entitled to the special advantage of his location, as long as there is [fol. 23] no undue discrimination (R. 109).

On the shipments made by Weatherford Crump Company through Galveston, which were handled by the Shipside Density Compress, direct to ship, on which we paid the ex-

port rate, there may have been a possible refund for drayage, and we made application for those refunds in some cases, but did not get them paid. (R. 110). (R. 111). That cotton was not receipted for by our own Agent. I do not know to what extent shippers ship to Galveston on the local 80¢ rate and afterwards apply that cotton on transit and use the export rate. When the delivery to the Agent of the Shipper at the Compress, is merely a constructive delivery, the shipper is not entitled to the local rate. Some of our shipments that move through the Shipside Density Compress at Galveston, were billed down there on the domestic rate, and the carriers justified the application of the local rate on the fact that we took possession of this cotton. We did not take possession of cotton. The cotton was unloaded (R. 112) out of the cars and run through the compress and went on to the pier. The man who makes shipments to the Density Compress at Galveston knows 99% of the time that he is going to export it. The Commission should find out whether or not this is export traffic and if it is it should bear the export rate. The question of whether there is an actual break in the shipment or not should be determined. (R. 114). If a shipment comes to the Turning Basin Compress billed to Houston on a local bill of lading for compression to be delivered at Shipside, it should bear the export rate. We have not moved anybody else's cotton through there and used the city delivery rate as far as we know. We compress the cotton for the owner of the cotton, and it is in the possession of the Turning Basin Compress Company. (R. 115). The Compress is the agent of the shipper for the purpose of compressing, and it is a [fol. 24] port facility insofar as the Commission is concerned, because it is a part of a terminal. Less than one-tenth of one percent of any cotton is stopped at Houston to be reconditioned. The cotton is theoretically in the possession of the shipper through the Turning Basin Company. (R. 116). The shipment is in transit the entire time. It would come out of the car on a truck, and move through the compress on a truck and be a continual movement.

There never was a shipment of through cotton compressed at our plant. A check of last year's records show that every bale of cotton remained in that compress 16⅔ days. That is an average. We collect storage from the

owners of the shipments. (R. 118). (R. 119). If the Dallas Concentrator instructs us to compress the cotton and deliver it to Shipside, there is nothing to apply but the export rate. He has taken out his concentration privilege at the interior point, and we have taken out ours at the port. (R. 120). If the cotton originates at a compress point, and is standard compressed and assembled in lots and shipped to the ports, it is true that the shipper of that cotton would be at a 3½¢ disadvantage as contrasted with Weatherford Crump & Company. (R. 120.)

In regard to Galveston, it is true that the cotton has to be trucked or hauled to the ship's tackle. I do not know what the cost is from the interior presses. The Moody Press advertises that they will deliver to the Shipside free. (R. 121). As to the advantage the Weatherford Crump Company may have over the interior shipper, I would say that we are entitled to some advantage on account of our location, because we are at shipside. If the Shipside Density Compress people were handling their own cotton, I don't see that there would be any complaint. (R. 122). We handle some cotton through the Shipside Density Compress at Galveston. If we bought 100 bales of a particular grade of cotton at Hillsboro, an inland compress point, and wanted to export it through the port of Galveston, (R. [fol. 25] 123) we would bring it to Houston, compress it to high density, ship it out through Galveston, and pay the inter-state rate. If the man at Hillsboro made the shipment straight through Galveston for export, he would pay he same rate. The rate attaches on cotton on any form. If the shipper at Hillsboro shipped out his cotton in a compressed state, and had it density compressed at the compress on the w-arf, I understand that he would pay and is paying the intrastate rate (R. 124).

The case largely resolves itself into a question of position at the port. The Galveston Compress Company was not our agent in receiving the shipment we made to Galveston. Our cotton was not consigned in care of D. Stuart Godwin. Weatherford Crump Company did not receipt for the cotton for delivery to the high density compress. (R. 127). This cotton was billed to Galveston locally, consigned to the Weatherford Crump Company. (R. 128). I understand that the order for switching to their different presses is delivered to the railroad by the Shipside Densidy Com-

press Company. We bill our cotton to Galveston, our order notifyy the Shipside Density Compress, and they have authority only to compress the cotton and deliver it to the ship. (R. 129). In one way it is our cotton while in the hands of our agents, the compress. (R. 130).

MR. GILLESPIE

I testify that in my capacity of Traffic Manager for Weatherford Crump & Company, I have a general knowledge of the sales, and I personally checked the freight on these particular shipments, and know that the freight was paid by Weatherford Crump and no part of it charged to anyone. We alone bore the charges. (R. 131). We buy [fol. 26] cotton at inland points, and some of it at Houston, and ship it through Galveston. The local rate is applied to Galveston. We pay the local rate out of Houston and file the concentration claim (R. 132). The cotton we buy at Hillsboro concentrated there is bought f. o. b. Hillsboro. We sell the majority of the cotton which we buy at f. o. b. point of origin. We have the protection of the through rate to Galveston to the port of export. Since July, 1920, we have exported through Galveston approximately 100,000 bales. We pay the freight charges on 99% of it. (R. 133). Our actual claim is for damage to the extent of 3½¢ per 100 lbs. The people who export through Galveston and pay this local rate buy cotton at the same points we do. (R. 134). I do not know about the value of cotton at the interior points, but I do know that in making our sale abroad we haven't been able to use the local state rate in order to meet competition. Weatherford Crump & Co. could have had the same privilege of using any rate that was available, if we had wanted to move to Galveston to do business. (R. 136). All the rates published are available to all shippers of cotton. The cotton that I was speaking of was sold before it was shipped to various foreign centers. (R. 137).

WITNESS HORACE BOOTH

I am Traffic Manager for the International and Great Northern Railway; have occupied that position or a similar

one for the last ten or fifteen years. We deny that the service is identical on cotton delivered to high density compresses on the water front, on which the domestic rate is applied, and on shipments delivered to the vessel, on which the export rate is applied (R. 138). The export rate includes 2¢ per 100 lbs. wharfage, whereas no wharfage is in- [fol. 27] cluded in the domestic rate. The export rate includes $4.05 now, $4.50 during the period covered by this complaint, and there is only $3.15 on domestic traffic, for switching charges. The export rate includes a drayage of 22½¢ per bale, whereas the domestic rate does not include such a charge. The demurrage charges on export traffic are much more liberal than the demurrage charges on domestic traffic. The through bill of lading to a foreign destination saves in interest an amount equivalent in many cases to a much greater difference than the difference in the rate, and it involves an additional expense and additional responsibility on the part of the rail carriers. The export rate during the period covered by this complaint (R. 139) included an unloading charge of 5½¢ per bale, whereas the domestic rate did not include such a charge. These differences in service justify the present difference between the domestic rate and the export rate.

It has always been the practise to publish higher export rates than domestic rates to a port. Prior to 1917, the difference was represented by the difference in the wharfage, and in 1917 the carriers undertook to increase that difference to the extent of 3¢ per 100 lbs. The export rates on other commodities are frequently lower than the domestic rates. The basis for export rates, generally, is the lowest domestic rate available to any one port, applied through other ports, equalized through other ports (R. 140). That lowest domestic rate plus terminal charges through any one port applied through any other port is the basis. That was the basis on which the higher rate was fixed on cotton for export over the domestic rate.

Exhibit #6 shows the total number bales of cotton received at Galveston from all lines from August 1st, 1921 to July 31st, 1922, and the delivery made on same (R. 141). Seven per cent of the shipments moving into Galveston [fol. 28] moved to the high density compresses on the wharves, at the intra-state or city delivery rate, whereas 23.6 moved at the inter-state rate. This exhibit covers

cotton moving from points beyond the state of Texas (R. 142). Practically all of the 7% originated in Texas. Some cotton moved to Galveston from Arkansas and Oklahoma, and a small portion from Louisiana.

A good deal of service is performed in connection with issuing a through bill of lading, such as a confirmation of the ocean contract (R. 143), furnishing the shipper with many copies of an export bill of lading, distributing bills of lading at the port, etc. (R. 144).

Mr. Hershey: If the complainant will admit that there are many duties in connection with the through export bill of lading that are not necessary, on a local bill of lading, we will let that subject rest.

Mr. Gillespie: I will always admit anything that is right.

Mr. Hershey: That is right?

Mr. Gillespie: Yes sir (R. 144).

Witness Booth: On export cotton the carrier absorbs a [fol. 29] switching charge of $4.50 per car, whereas on domestic traffic, the carrier absorbs a charge of $3.15 a car. On export cotton the carrier absorbs a charge of 5½¢ a bale for unloading (R. 146). Carrier absorbs also a drayage charge of 22½¢ a bale on the same cotton.

When the domestic rate is applied we absorb only the $3.15 switching charge; we do not absorb the 22½¢ a bale. (R. 147). If the concentration had taken place under the high density we would absorb the same as we do any where else. We absorb switching into the concentration place, and also the movement out (R. 148).

This export cotton in times of congestion fills up the yards and causes blockades (R. 149). There is no delay in delivery to the high density compress on domestic rates.

Cross-examination:

Considerable cotton moves on export lading. There is considerable difference in the physical handling on the two kinds of cotton. Cotton which is consigned to vessels for export is frequently held in the outer yards for disposition, which involves considerable additional switching service (R. 150).

If orders were given before the arrival of the cotton, it would be possible to switch a car down there, unload half

of it on the left hand side on to the compress on which the city delivery rate is charged and the other half of it out of the other door on the pier on which the export rate is charged. At the same time the export rate would carry with it the additional privileges I have enumerated. I do not think we would ever have a mixed shipment of export and domestic in the same car (R. 151).

[fol. 30] WITNESS J. S. HERSHEY

I am General Freight Agent of the Gulf Colorado & Santa Fe Railway, headquarters at Galveston, Texas. I have occupied that position for nearly 20 years. Exhibit #7 is a copy of the Railroad Commission of Texas circular #401, dated March 16th, 1897, still in effect. The Galveston rates are applicable to and from delivery points on the Galveston Wharf Company's railroad. That does not include Shipside. It does include the high density compresses on the Galveston Wharf Company's railroad (R. 152).

In I. & S. Docket 837, 43 ICC 29, rates were authorized by the Interstate Commerce Commission for export on the basis of the Galveston Intra-state rate plus a figure higher than the additional terminal cost there necessary to make export deliveries. The unreported decision in 29 I. C. C. 732, Unreported #A-519, King Collie & Company et al. against the Abilene & Southern, rates on export cotton from points in Texas to Galveston, the Commission found not unreasonable rates for export 3¢ per 100 lbs higher than the domestic rates to Galveston.

On cotton delivered under the domestic rate at Galveston our troubles are over. On cotton delivered under an export bill of lading at the high density presses, we receive the receipt of the Steamship Agent, the connecting carrier, and we perform no further (R. 153) service with that cotton. I think it would be proper if cotton, in connection with the application of the export rate, might be concentrated at the high density presses and moved to a ship located at another pier in exactly the same manner as cotton would be moved from a so-called interior press to Galveston and moved to the pier (R. 155).

At the interior concentration point, such as Hillsboro, [fol. 31] cotton which had been ginned and compressed to a density of 10 or 12 lbs. per cubic foot, is there compressed to about 22½ lbs. per cubic foot for the convenience of the carriers. It is not the rule in Texas to pass a compress. The railroad pays for the compression—18¢ per 100 pounds. The shipper does pay the compress for certain merchandising services. The cotton is then delivered to the railroad either on a through export bill of lading, a bill of lading to the port for export, or a domestic bill of lading to the port. (R. 156). The rate on a shipment to the port for export, is the same as the rate on a shipment Shipside. You have two rates, but you have three forms of bill of lading. About the time of the war, steamship rates became very high, and a compress was developed that would compress cotton to 32½ lbs. per cubic foot. At the time of the Unreported Decision referred to, they had no such thing. Under the rates of the steamship companies, it is profitable to compress the cotton to high density. There are very few of these high density compresses in the interior. (R. 157). They now have them at Texas City, Galveston and Houston, and one is being constructed at Aransas Pass.

WITNESS J. D. MARTIN

I am Chief Clerk in the Division Freight Office of the Santa Fe Railway at Fort Worth, Texas. I have been in that business eight years. I had a number of years railroad experience prior to that time (R. 158). On a bill of lading for 100 bales of cotton from Ft. Worth to Liverpool, England, we wire the General Freight Office, giving particulars as to the ocean contract and rates, and asked that that be confirmed. That is a contract previously made by the shipper with a steamship agent at the port. That requires a 50 word message. We must then receive a tele- [fol. 32] gram from the General Freight Office, telling us that the contract has been confirmed by the Steamship Agent, and then we have authority to sign the bill of lading. We then call the compress companies (R. 159) and secured the lading on this cotton, getting the car numbers and condition of the cotton. We must make out and sign

ten or twelve copies of the bill of lading, and then affix a form of validation and the office stamp. We then call the shipper by telephone and tell him that the bill of lading is complete and he sends for it or we send it to him by the Porter and keep two copies for our office records. The cars are placed at the compress before his documents are made up (R. 160). Box car equipment is ordinarily available at the compress because we are moving flat cotton in and compressed cotton out.

From the two office copies of the bill of lading, we are required to make eight more. (R. 161). Two copies for the Steamship Agent, one copy for the general freight office, and one copy to the export agent. We thus make an average of 20 copies all together.

As a rule the charges from point of origin to destination are prepaid on cotton moving under an export bill of lading. Usually we collect at the interior points of origin, not only our own freight charges to the port but also the ocean freight charges. (R. 162). That makes our office responsible for a great deal of money. In some cases these confirmations designate the policy in which the cotton must be shipped from the interior. We have bills of lading calling for shipment on a specified Steamer. The confirmations are usually one of three classes, prompt shipment, meaning within ten days, immediate shipment, (R. 164), meaning within one or two days or so, or stating a date on which the shipment must be at the port. The railroad must see that the cotton moves. We do not have that duty in con- [fol. 33] nection with domestic shipments to the port.

The export bill of lading does not show the date on which it is to sail. (R. 165). The contract between the owner of the cotton of the Steamship Agent, and the owner of the Steamship, sometimes specifies the identical Steamer, but ordinarily it calls for "Early November Steamer Shipment" or similarly. If they can't load in one they load in the next one that may go 15 or 20 days later. (R. 166). It is frequently necessary in giving information to an Agent at Gainesville, for instance, to use the long distance telephone. We have discontinued the practice of issuing the export bill of lading for a shipment moving from Gainesville. Gainesville would issue the bill of lading, but I may have the particulars on it and have to confirm the charges.

(R. 167). I have never been requested to exchange a domestic bill of lading for an export bill of lading. At present we issue through bills of lading only at compressed points.

Cross-examination:

The ocean rate now runs from 40¢ to 50¢ per 100 lbs. and on a shipment of 100 bales of cotton, we would collect $250.00 or $300.00 ocean charges for the Steamship Company. (R. 168). We have lots of shipments billed to Galveston on local ladings or which we collect the domestic rate. I don't know what is the intention of the shipper to do with it.

WITNESS E. M. WARRENBERGER

I am District Freight and Passenger Agent for the I. & G. N. at Galveston. I have held that position two years and eight months. Most ocean contracts at Galveston are confirmed through line wires, telegraph, others by Western [fol. 34] Union and again long distance, and occasionally the Steamship Companies telephone direct on ocean contracts. Our messenger boy brings the line wire messages from the local freight office to us during the day, and we immediately get in touch with the Steamship people, and get the ocean rate from them. The difference between high density and standard at the present time is 15¢ per 100 lbs. Then we issue a wire and send it back to the local office by a messenger boy. Our local office is located possibly 13 blocks from our office. (R. 170).

Exhibit 8 is a form which we fill in to confirm the ocean contracts with the Steamship Agent. It is filled in by our stenographer and the messenger boy takes them over to the different Steamship Companies for their signature, and later on we receive the bills of lading from the Agent at the point of origin which is sent to the different Steamship Companies. They are assorted in our office and then taken out by the messenger boy to the different Steamship lines. We usually receive about six copies.

On domestic cotton we have no trouble at all. We hardly know that the shipment is coming in until it reaches Gal-

veston. On the through bill of lading, the ocean freight charges are usually paid, and this makes necessary that our local agent draw up a regular statement to the Steamship Company and a draft paying them the ocean charges. We draw that draft when the bill of lading is completed, possibly a week, sometimes two days, after the money is collected. Sometimes the Agents have to draw a draft on the Treasurer to pay these charges when short of funds. We keep a file of our ocean contracts in our office (R. 172). [fol. 35] We make out the confirmation and let the Steamship man sign it. We do not have that to do in connection with the shipments moving through the high density compress.

Cross-examination:

This method of handling applies only on shipments moving on through export bills of lading, and has no reference to shipments moving on local bills of lading (R. 173).

WITNESS J. F. GARVIN

I am General Freight Agent of the M., K. & T. Railway Company of Texas. I concur in the testimony of Mr. Booth and Mr. Hershey in every respect (R. 174).

WITNESS J. L. WEST

I am Manager of the Transportation Bureau of the Dallas Cotton Exchange. Before that I was in Railroad and Traffic business for about thirty years. I represent the interests of the members of the Dallas Cotton Exchange, about 75 in number, who ship in the course of a season from 1¼ to 1½ million bales of cotton. In connection with the Houston Cotton Exchange, they probably ship 75% of the cotton produced in Texas. They concentrate and ship through Houston and Galveston in an ordinary season possibly 600 or 700,000 bales of cotton (R. 175). They ship on both export and local bills of lading, and the same shipper uses both kinds. Our interest is to preserve (R. 176) the present relationship.

The export rate from Texas common points to Galveston [fol. 36] is 85½¢, 5½¢ more than the local rate. Two cents of that is wharfage charge, and the export rate is really only 3½¢ more than the local rate. I cannot concur in the testimony of the railroad to the effect that the services on export shipments are greater than on local shipments, because I have not the information, but I believe that all they have stated is substantially correct. (R. 177). On page 20 of Fonda's I. C. C. #135, item #200, shows that the rate found in Item 400 may be applied to Galveston on cotton moving there for concentration, and thus that the 80¢ rate is not only an intra-state rate but also an inter-state rate. Some of our shippers ship to high density compresses on the Galveston wharves, and we claim that the 80¢ rate is a legal rate for that shipment. Cotton that is sent to the high density compress is concentrated cotton just as much as that concentrated at the Turning Basin Compress in Houston, or at Dallas, or at any other point in the interior where there is a compress or warehouse. (R. 178). We bring it to the high density compress at Galveston for the purpose of concentrating it and reshipping it just as we do cotton shipped to other places. Some of it goes out on ships to foreign ports, some of it to New Orleans, for movement to the Southeastern states or New England, some of it to San Francisco, etc. We pay the high density compress 72½¢ a bale for its services, and we get a rate from the Steamship which is 15¢ per 100 lbs. less than the rate on standard compress cotton (R. 179) thus we save about 6¼¢ on a 525 lb. bale of cotton. That is the reason we send the cotton to the high density compress. The advertising matter of the Shipside High Density Compress Company states that that saving is 7¢. I place it at 6¼¢. They also state that the shipper saves 3½¢ per 100 lbs. by ship- [fol. 37] ping on local bills to the Shipside Compress, but they do not state the fact that when they move the cotton from the compress to the ship it costs 18¢ a bale. As a matter of fact it really costs as much money to move cotton from the interior to shipside through the density compress as it does to move it direct to shipside without going through the density compress (R. 181).

There is another kind of cotton that moves to Galveston on a local bill of lading, without the words "for export"

on the bill, consigned to the shipper or his agent, that does not go to the high density compress at all. It goes right to the ship, just the same as cotton moving on a through export bill of lading does, and it is in fact export cotton, and the carriers assess on that cotton the export rate as they should. The services the carriers perform on this last described kind of cotton, of course, are less than on the cotton moving on the through export bills of lading, but we have no objections to them earning a little bit more on that if they can. It is so important to us to have these rates equalized that we are willing to pay them even a little out of proportion to the service they perform. (R. 182).

On the cotton that goes into the shipside density compresses, and is later moved to the ship, the price we pay the density compress for its service does include the cost of delivery to the ship. We have the privilege at Galveston, as well as at Houston and Texas City, of asking for the transit privilege and requiring the carrier to assume the expense of moving the cotton from the compress to the ship, and their tariff published that they will refund us 22¢ per bale. We have to pay the export rate of course when we do that. (R. 183). The refund of 22¢ per bale is [fol. 38] just about as much as the difference between the two rates, and ordinarily we do not bother with it. (R. 184). I think 3½¢ is about ½¢ too much in the difference, but we are not going to complain about it. It is important to us that all shippers be kept on an even field, and that all the ports should be kept on a parity, with the interior concentrating points, and we have that now just about as near as is possible. If the railroads should make 83½¢ the local rate, or 80¢ the export rate, or adopt some intermediate figure and make it apply for both, that result would not equalize. It would compel the man who shipped down there locally and bears the expense of moving the cotton from the local points to Galveston Shipside, to pay more than the man who uses the export bill. (R. 185). The man who is located beyond the wharf and is not adjacent to it, would have a greater expense than the man who concentrates there and ships direct. At Houston all of the compresses and warehouses except the complainant's would be placed at a very great disadvantage. The com-

plainant would be excepted because his compress is situated 300 feet from the ship. (R. 186). There is no distinction except his distance from the ship. One has to move to a ship three miles, and the other 300 feet. The complainant would have the best of everybody if the rates were equalized.

The present adjustment is different somewhat from what it has been since August 26th, 1920. There has been a greater difference between the export and the local rate, (R. 187) and some of the traffic involved in this complaint doubtless moved during the period when there was a greater difference, but practically the differences and advances and reductions have always been equal to what it costs the owner of the cotton to move it from the concentration place at Galveston to the Shipside. The difference [fol. 39] at one time was 6¢, plus the 2¢ wharfage charge, but at that time the cost of moving the cotton from the concentration place to Shipside was greater. Drayage was as high as 30¢ a bale. One large concentrator at Galveston has a contract with dray companies to dray cotton when destined to piers west of 25th street at 18¢ per bale; to piers east of 25th street at 20¢ per bale, with the condition that if they give the dray line 20,000 bales a month the rate is 18¢ to all piers. Two of the compresses operate their own drays. When they are obliged to employ dray lines because of a larger business than their own drays can handle, they pay we understand 24¢ and 25¢ a bale. Other concentration places, one of which is on the dock, pay 17½¢ a bale. It is fair to say that the average cost for all is 18½¢ per bale. There is an equalization today, but if this complaint prevails there will not be an equalization. I have nothing to offer as to the reasonableness of the rates, except may be that they are a little too high, but we are not complaining about that (R. 190).

Weatherford Crump & Company could have gotten the refund on the shipment on which they called upon the railroad to assess the export rate. Some of our members use both export bills of lading. The through bill and the local bill for export. An individual member might use both in a week's time. (R. 191). The through bill is the desirable document, it saves us money. Some foreign purchasers are willing to take cotton a through export bill of lading

at Dallas. Others insist on what is called a shipped bill of lading, indicating that the cotton has been placed on the ship when the document is signed. That is largely a matter of sentiment or custom or lack of faith in the shipper. Some spinners in Europe cannot believe that the cotton has been shipped unless it is on a ship. (R. 192). I never [fol. 40] knew of a different rate being in effect for the through bill of lading from that for the domestic bills for export. The shipper using the "For export rate" has available by law, if he wants it, the other document, the through bill, that is issued by the railroad by greater effort than domestic bills of lading. (R. 193).

Some of our members ship on local bills of lading to the Shipside Press, some ship on local bills to the port for export, some ship on local bills to the port without any destination shown, some ship on through bills of lading. Some do all four. If there was a saving of 3½¢ per 100 lbs. by using high density presses, they would all ship that way, and there would be more than 7% of the total receipts at Galveston handled through the high density pressers. (R. 194).

WITNESS A. S. L. TOOMBS

I am Agent for the Southern Products Company at Galveston, and Manager of the Southern Products Company warehouse. We own our own press and warehouse at Galveston. In the last seven years we have averaged 100,000 bales a season through our compress and warehouse, and we have handled as high as 225,000 bales in one season. (R. 196). The rates should properly be lower for domestic delivery than for export Shipside delivery. It costs us at present a little more per bale to transport our cotton from our warehouse to Shipside than the difference in the rate allowed. It costs us from 18¢ to 20¢ per bale, and on the average weight of cotton I believe that the difference between the rate is not more than 17½¢ per bale. If the rates were made the same, we would be at a disadvantage because the people at Shipside would be able to get their [fol. 41] cotton right at the ship where we have ours a mile and one-half to two miles away from the ship. (R.

197). We would also be at a disadvantage with the interior concentrator. There never has been a time since we have been in business in Galveston when the difference in the rate more than paid for the difference in drayage alone. We are not located on the wharf.

WITNESS F. R. DALZELL

I am Traffic Manager of the Houston Cotton Exchange. I have been in that position about two years and one-half. (R. 198). Prior to that I was General Freight Agent for the Gulf Colorado and Santa Fe Railway Company. I represent the Houston Cotton Exchange, consisting of about 75 members, among which there is the ownership of 16 compresses and warehouses which have a capacity of not less than 500,000 bales. From August 1st, 1922 up to October 23 there had been received into the compresses and warehouses at Houston 781,858 bales. There are in stock in Houston warehouses and compresses today 392,556 bales. Houston exported last season 478,000 bales, and so far this season we have exported 193,000 bales. (R. 199). In our opinion it would very seriously damage the cotton industry throughout the Southwest to destroy the important spot markets that have grown up at Houston and Galveston, whose existence would be impossible under the handicap of equalized rates suggested in this complaint. If the rates were made the same, the concentrator at Houston and Galveston would simply be at a disadvantage to the extent of the cost to him of moving his cotton to the Ship. The complainant would be the only one to benefit. If the principle were established at Houston, the complainant would have to pay 83½¢ instead of 80¢ as he now pays. But his competitors would have to pay the same rate, and [fol. 42] he would still have the same advantage there. (R. 201). His advantage would be the difference between what it cost him to get to the ship and what it cost the others. He is 300 feet from the ship and the others are 200 or 300 miles.

I adopt all of the testimony of Mr. West. The Ship Agents are now discussing the proposition of reducing the difference in the ocean rate in favor of high density com-

press cotton to 10¢ instead of 15¢. If that is done, there will be a loss to the shipper (R. 202), and I anticipate that this moving into the high density compresses, perhaps, will almost entirely stop. The movement into the high density compresses is solely to get the benefit of the better ocean rate.

I was with the Santa Fe Railroad 15 years, and I am familiar with the production of cotton in Texas. It ranges from two and one-half million bales per year upward. (R. 203). Oklahoma ranges around a million bales, 800,000. The cost of concentration has been so equalized by the carriers that the expense of concentrating at the nearest concentration point, or at Houston, or at Galveston, is practically the same in the final cost. If there were any considerable advantage in any one particular method, the whole lot of cotton would follow that line. That would overload that particular channel. (R. 204). It is an advantage to have as many ways of doing this business as possible, so that all channels may be employed.

WITNESS I. M. GRIFFIN

I am Traffic Manager for Geo. H. McFaddin & Bro. [fol. 43] Agency, Waco, Texas. I was formerly with the Texas & Pacific Railroad. I was first with the International & Great Northern Railroad for ten or twelve years, then with the T. & P. in various capacities, and finally as General Freight Agent and Freight Traffic Manager, and then I took my present position. My firm owns large concentrating warehouses and compresses at Galveston. During a season it would handle from 200,000 to 300,000 bales through those warehouses and compresses. The rate on cotton for export or Shipside should be higher than for domestic delivery, because the shipper incurs expense in making the final delivery or disposition of the cotton if he ships on the local rate. That expense approximates the difference between the two rates. (R. 206). As a local concentrator, we find that we have no advantage in exercising the privilege of local concentration. If the same rates were applied for local delivery as for Shipside, we would be at a disadvantage. I was with the I. & G. N. at the time of

the hearing of the King, Colley case when the present rates were established to Galveston for export, (R. 207) after the Texas Railroad Commission had reduced the intra-state or local rates, a readjustment followed. The difference of 3¢ between the two equalized the local with the export rate. I affirm Mr. West's testimony. (R. 208).

WITNESS E. H. THORNTON

I am Traffic Manager of the Galveston Commercial Association and the Galveston Cotton Exchange and Board of Trade. I appear in support of the present adjustment. My exhibit 9 is an excerpt from the Commission's decision and what was known as the Louisiana Cotton Case, I. & S. Docket 955, 46 I. C. C. 462, in which the Commission approved higher rates for export than for domestic delivery [fol. 44] at the port of New Orleans to the extent of 3¢ per 100 lbs. That difference formerly prevailed at Galveston, but it has been increased by the Director-General and the Interstate Commerce Commission in Ex Parte 74 (R. 209) and the 10% reduction bringing it back down to 3½¢. J. H. Glenn's Cotton Tariff I. C. C. A-293, which gives export rates on cotton, or rather rates on cotton from the southeastern states, and the Mississippi valley, to the Gulf Ports and the South Atlantic Gulf Ports, provides for rates approximately 5¢ higher on export cotton than on domestic or local delivery cotton. Mr. C. S. Fay's Cotton Tariff I. C. C. #5, provides that the rates to Shipside New Orleans for export shall be 4¢ per 100 lbs. higher for domestic delivery, and it seems that this is almost a universal practice. (R. 210). I do not know whether the export rates to Boston or Philadelphia are higher than the local domestic rates. Those ports are not cotton ports like the southern ports. At practically all the southern ports, there are local concentrators who utilize the facilities which they construct themselves or which they rent at the ports. It is largely for the advantage of the concentrator at the port, in order to preserve his advantage of location, that this equalization is in effect. (R. 211). This equalizes him with the man in the interior, who can get his freight to Shipside for 83½¢. The man at the port has to pay 80¢ plus the ap-

proximately 3½¢ per 100 lbs. more to dray it or transfer it to Shipside.

In explanation of Exhibit 5, the question was raised as to the difference between the export and the local rate on cotton from Oklahoma. The Galveston and Houston Cotton Exchanges in a formal complaint before the Commission in Docket 11,965 requested that the export rates on cotton [fol. 45] not only from Oklahoma but from Arkansas and Louisiana to Galveston and Houston be made 5¢ per 100 lbs. higher than the local delivery rate, and we are waiting for the final decision in that case to line up the Arkansas, Oklahoma and Louisiana export cotton rates, so as to remove this discrimination now existing (R. 212) against the local concentrator.

Note 2, page 45 of Mr. Glenn's Tariff shows that the rate for export to the various ports named, which includes eleven ports beginning with Norfolk, Virginia and ending with New Orleans, Louisiana, shall be 5¢ higher than the rates to the port. The North Atlantic ports usually don't handle any cotton from this company billed through to European destination. (R. 213). The rate on cotton now from Galveston to European destination averages about 50¢ per 100 lbs. From Galveston to New York via the Mallory and Morgan Lines, it is 35¢. Consequently, except where the rate cuts no figure, it would not be possible to move cotton from Texas to European destination through the port of New York. If the movement was undertaken all rail, the through rate to European points would probably be three or four times the rate via the Gulf ports. New York and Boston do not export a great deal of cotton. Savannah could take care of the Carolina territory, Savannah and Norfolk. (R. 214.)

Mr. Booth:

My Exhibit #6, showing 971,576 bales of cotton moved on local billing to inland compresses refers to cotton moving to the compresses located away from the water front at Galveston.

[fol. 46] **Narrative of the Proceedings Before the Interstate Commerce Commission in I. C. C. Docket Nos. 13,991 and 14,940, Railroad Commission of Texas #2256**

#13,991

WEATHERFORD CRUMP & COMPANY, Complainant,

vs.

ABILENE AND SOUTHERN RAILWAY COMPANY et al., Defendant

#14,940

APPLICATION OF RATES ON COTTON TO GULF PORTS

#2256

COTTON RATES ON TO TEXAS PORTS, WATERSIDE CONCENTRATION

vs.

CONCENTRATION BACK FROM THE WATER FRONTS

At Houston, Texas, October 22nd, 23rd, 24th, 1923

WITNESS LAWRENCE B. McCORD

I am special agent for the Interstate Commerce Commission. I have held that position about four years. (R. 12). I was Examiner in the Bureau of Accounts for about nine years. I had seven years with the Burlington Railroad in various capacities, mostly with tariffs and the application of rates. Prior to that I had 19 years experience in transportation with the Adams Express Company.

There are two warehouses and Compresses in Houston that can truck their cotton by hand from the compresses to the ship tackle. They are owned by Weatherford Crump & Company and Anderson Clayton & Company. (R. 13). The compress of Weatherford Crump & Company is known as the Turning Basin Compress. It handled 88,811 bales last season. By last season we mean the cotton season from August 1st, 1922 to July 31st, 1923. There are ten compresses and warehouses in Houston located back from the water front which are obliged to move their cotton by truck,

barge and rail switch movement to get it to the Shipside. [fol. 47] They handled 1,237,472 bales last season. The net receipts for Houston as compiled by the Houston (R. 14) Cotton Exchange were 1,377,557. The aggregate number delivered to all Houston compresses was 1,326,283. The difference between the two, 51,274, represents approximately the number of bales of cotton for last season which moved through to Shipside, and on which the export rates were applied. It represents about 3-7/10 per cent of the total number of bales received in Houston which was 1,337,-557 bales. (R. 15). The local consumption of cotton in Houston is very small. There are no cotton mills in Houston. The Board of Trade figure is less than 3/10 of 1%.

Cotton exported from Houston to foreign countries last season amounted to 719,942 bales. 3,680 bales were shipped in coastwise movement. In investigating this case, I interviewed the local agents of the various rail lines which hauled cotton into Houston. The practice of the carriers is very uniform. On a shipment moving on a through bill of lading they apply the (R. 16) export rate. On a shipment moving on a local bill of lading, with the notation "for export" they deliver it to Shipside and also apply the export rate. On shipments consigned to compresses, they apply the local rate. On shipments moving in at the local rate to a compress and later exported on which they assume the cost of transfer from the compress or warehouse to the Dock, they apply the export rate and absorb the cost of transfer. I find no evidence that the carriers attempt to police the cotton which they move from compresses to shipside to see whether the rate should be raised to the export rate, except what might incidentally be done in handling concentration claims, or claims for adjustment of the refund of the cost of transferring from inland compresses [fol. 48] and warehouses.

I have a letter from the Auditor of the Southern Pacific Railroad addressed to me, outlining the practice of the Southern Pacific in applying the local and export rates to cotton. (R. 17). It shows the following practices:

(1) When cotton is covered by a through bill of lading issued to a foreign country and goes to the pier, the export rate is applied.

(2) If shipment is covered by bill of lading calling for export, and consignee demands local delivery on account of cotton being locally consumed or going into storage, the domestic rate is assessed.

(3) If shipment is covered by bill of lading calling for export, and the cotton is set on the pier, the export rate is assessed. (R. 18).

(4) If bill of lading calls for local delivery, and if ordered to Shipside before freight is paid, the cotton will be sent to the pier and the export rate assessed.

(5) If bill of lading calls for local service and the cotton is ordered placed at high density press, the local rate will be applied.

(6) If bill of lading calls for export and the cotton is ordered to high density press, the export rate will be assessed.

(7) If bill of lading calls for export, and it is necessary to hold the cotton in the yard, awaiting orders as to the piers or shipside delivery, the export rate is assessed until disposition has been received, and then the rate would be [fol. 49] corrected to domestic if the cotton was changed from export to domestic.

(8) If the bill of lading calls for service to Houston or Galveston only, and consigned to cotton factors, a local or domestic rate is assessed.

My Exhibit A-1 in a letter from the local Agent of the Houston Belt & Terminal Railway Company at Houston outlining the practice of that Company in assessing rates on cotton in Houston. (R. 19). It follows the same general plan outlined by the Southern Pacific. The statement in the letter refers to all the cotton dealers and warehouses in Houston. The list in paragraph #1 has no bearing on the case. (R. 20).

Less than 4% of the cotton that moved last season from interior ports moved direct to ship and had the export rate applied. The balance, approximately 96%, moved to the compresses in Houston at the domestic rate. The domestic rate is 80¢ from Texas common points, and the export rate, including the wharfage, is 85¢ to Houston. It is 85½¢ at

Galveston. The net export rate to the carrier in both cities is the same, 83½¢. There is a difference in the wharfage charge of 1/2 cent.

I have here a memorandum of 16 consignments of cotton moving from points in Texas to the Houston Compress Company in Houston, on which the local rates were applied and for which space was (R. 21) reserved on board the ship before the shipments left the point of origin. The Houston Compress Company is a Texas Corporation engaged in storing, handling and compressing cotton, and also operating a warehouse, and substantially all of its stock is owned by the firm of Anderson Clayton & Co., but the compress company handles cotton for the public generally. (R. 22). [fol. 50] This memorandum is Exhibit A-2. (R. 23).

Cross-examination:

The shipments in A-2 were received at the compress, not at the wharf, of the Houston Compress Company. None of them were made by Anderson Clayton & Company. (R. 24). I understand that these shipments were all compressed to high density, with the exception of 200 bales from Giddings, Texas, moved in round bales. I ascertained that the domestic rate rather than the export rate was assessed by examining the carriers' record of delivery. It would be expensive to police this traffic and ascertain whether or not it is export or local traffic. (R. 25).

Cotton which comes into the compresses at Houston, consigned to Houston merchants and factors, undergo the merchandising operation rather than a transit operation. The service consists in arranging the cotton into certain grades and putting it in certain stocks from which it is subsequently shipped. (R. 26). These services were not performed on the cotton shown in Exhibit A-2. Nothing was done to that cotton but reduce it to high density and take it right onto the ship. Space had been reserved for it on the ship already; I got that information from the ship agent. (R. 27).

All of the cotton of the Turning Basin Compress is merchandised, which means sorted, graded and prepared for market. The figures of 4% was approximately what moved on through export bills of lading. It does not mean all of

the cotton on which the export rate was applied. A great deal of cotton at both Houston and Galveston comes in on the local rate and is subsequently readjusted to the export rate. Whatever there would be of that kind would have to be deducted from the 96.1% estimate which I made. (R. 29). If the owner of cotton which has moved in on the [fol. 51] local rate declares it for export, the carrier charges the export rate and assumes the cost of transfer from the compress or warehouse to shipside, and it may be switched or drayed to the ship. If the refund which the tariff provides for covering the cost of transfer to the shipside is more than the increase in the rate, the shipper would declare it for export. The tariffs provide for refunds to shippers, or allowance to shippers, for drayage on export cotton, or concentrated cotton, and they have, I believe, a year in which to declare it concentrated. (R. 30). If it cost less to dray it down to the vessel than the allowance provided by the tariff, the shipper would naturally avail himself of the rate and get the allowance. A substantial amount of the cotton is handled that way. If the shipper declares for export and pays the export rate, the railroad company absorbs at Houston 13¢ per bale, and at Galveston 22¢ per bale. That is the cost of moving the cotton from the warehouse to the ship. (R. 33). The carriers make an allowance of 2½¢ per 100 lbs. where the cotton is drayed in Houston. I understand that refund is made regardless of how the cotton is transported to the ship, and regardless of the cost of transporting it. If the cotton is drayed and an 83½¢ rate is paid on it, and an allowance of 2½¢ per 100 lbs. for drayage is made, the net revenue of the carrier is 81¢ per 100. (R. 34). On cotton that is switched from the water front warehouses to shipside, the shipper pays the 83½¢ rate and the carrier absorbs the switching cost whatever it is. (R. 35). The practice is not to collect the switching charges; the railroad just switches it. (R. 36).

On the 16 shipments in Exhibit A-2, the bills were all local bills and not marked for export. My opinion is that there would be no difference between the service on a shipment moving on a local bill of lading and the service on a [fol. 52] shipment traveling on a local bill of lading marked for export, except that the shipment for export would be entitled to a longer period of free time under the demurrage (R. 37) rule.

Counsel Fulbright, for the Houston Cotton Exchange, admitted for purposes of the record that 99% of the stock of the Houston Compress Company was owned by the Anderson Clayton Company (R. 38).

On the shipment shown on Exhibit A-2, from Taylor, Texas, for instance, I did not follow up the shipments to see whether they were ever transferred to an export bill of lading, but they were delivered on the domestic rate adjacent to the shipside within hand-trucking distance of the ship. (R. 39). The carriers have no information available on which they can act in setting up an under charge, and the owner of the cotton will not ask for a readjustment of the export rate unless it is to his interest to do so. (R. 40). The assumption is that these shipments got substantial shipside delivery on the domestic rate. (R. 41). It is my understanding that all this cotton was graded and merchandised up state. If the export rate was finally paid on these shipments, the shippers can show that. These shippers were not delivered at the wharf but at the compress in the warehouse back of the wharf, and if the shipper paid shipside rates, the carrier would have to pay whatever expense there was for transporting from there to the ship's berth. (R. 43). In all cases there is a service of putting the shipments within the reach of the ship's tackle. (R. 44).

The Houston Compress Company follows the same plan that is followed on the piers at Galveston. The Ship's Agent takes delivery within reach of ship's tackle—200 feet. In the case of the Houston Compress Company, the case of the 200 feet would extend over possibly a quarter, or a third of the way across the warehouse of the compress [fol. 53] company. The cotton is stocked in the warehouse within that specified limit, which is marked out for it. Any delivery there is delivery to a ship agent. (R. 45).

Direct examination with respect to Galveston:

The Shipside Density Press Company has six compresses adjacent to the wharf and under certain circumstances, the cotton may be trucked by hand from the press to the ship, namely, when the ship to which it is destined is berthed close to the press or warehouse where the press is located. The ships in Galveston do not as a rule change their berths.

The Cotton Concentration Company do a merchandising business there, and some of their cotton may be trucked by hand under similar circumstances. That company has no compresses of its own; it handled a total of 353,365 bales last season, of which 15,862 were hand-trucked to the shipside. (R. 47). The Cotton Concentration Company usually uses the compress of the Shipside Density Company. There are 15 cotton warehouses in Galveston, from which the cotton is switched or trucked to shipside. The usual practice is to truck it to shipside. That means wagon drayage or automobile trucks. The 15 uptown compresses handled 1,883,821 bales last season. The total number of bales received in Galveston last season, according to the records of the cotton exchange, were 2,402,879 bales. 1,929,111 bales of that were exported; that is approximately 80%; 422,878 bales went in the coastwise movement. 85,954 moved out of Galveston by rail to points North. There is no local consumption of cotton in Galveston.

Exhibit A-3 is a letter from J. Witherow, local Agent of the G. H. & H. Railroad Company, that is, the joint Agent of the I. & G. N. and the M. K. & T., outlining the methods of applying the local and export rates on cotton at Galveston. The letter shows that the methods followed are [fol. 54] substantially the methods of the Agents at Houston. (R. 49).

Exhibit A-4 is a letter to myself from the local agent of G. C. & S. F. Railroad at Galveston, Mr. A. W. Dunham, pertaining to the method of applying the rates on cotton, and is substantially in accord with the other letter.

Some of the cotton which moves into Galveston on domestic bills of lading is ordered direct to shipside upon arrival, and in that event the carrier applies the export rate and assumes the cost of transfer from the warehouse to the ship. (R. 50). This method of handling Cotton is employed to a considerable extent by the cotton factor.

On such cotton, consigned to the Shipside Density Compress Company, and moving at the local rate, consignment is made in care of a Ship Agent, and the space is contracted for sometimes weeks or months before the shipment moves. Usually the bill of lading comes through the bank with definite instructions as to the application of that particular shipment on a certain contract. (R. 51). Very often when

the reservation is made, the shipper does not have in mind any particular shipment. That is also true at Houston.

This statement shows seven shipments picked at random, moving from Texas points, consigned to Galveston on which the intra-state rates were applied, for which vessel space had been reserved before the cotton left the point of origin. For the 40 bales shipped from Mart, Texas on August 29th, 1923, the records of the Steamship Agent show that that space was reserved on August 20th, 1923. The shipment arrived over the I. & G. N. and was delivered to a vessel, destined to Bremen. Sixty-two bales from Clarksville, Texas, billed out on September 27, 1923, for which space was reserved on June 8, 1923, moved via the I. & G. N. and were delivered to the Steamer destined to Liverpool. (R. 52). This particular shipment was applied on the contract made three months before. Ordinarily a letter [fol. 55] accompanies the bill of lading directing the ship agent to apply this shipment on contract of a certain number. The contracts have numbers. (R. 53). These shipments were delivered to the Shipside Density Compress and not direct to the vessel. This information in regard to space reservation was secured from the Steamship Agent. (R. 54).

Cross-examination:

When the reservation is made, the buyer at the port does not know what cotton he will put in that space, but he does know before the shipment leaves the point of origin that that particular cotton is going into that particular space to be applied on that particular contract. (R. 55). The man who reserves the space in the ship might not own the cotton until after delivery at the port. There may have been a bona fide sale. The purpose of this exhibit is to show that it is possible for the shipper up-state, knowing that the space is reserved and intending to apply this cotton to that space, still ships out and pays the 80¢ rate. (R. 56).

All of these shipments pass through the compress and are compressed at high density and the shipper paid the regular price to the compress, which was 72¢, and for that charge the compress delivered it to the ship's tackle. The delivery was made by the compress and not by the railroad.

(R. 59). It is my understanding that the same thing happened at Houston as shown in my Exhibit A-2.

The Shipside Density Press does not maintain facilities for merchants to merchandise their cotton. The Houston Compress maintains a large warehouse which is used by various merchants for a merchandising service. (R. 62). [fol. 56] If the ship could be shifted to the berth opposite the facility where the cotton is, it would obviate the necessity for draying the cotton (R. 63). I understand that at Houston the ship is required to shift her berth. The practice of shifting or not shifting the berth of the ship is simply a custom, liable to change, which is determined largely by competition. (R. 64).

In Houston you cannot dray from the North side to the South side of the channel, because there is no bridge, while at Galveston you can dray from one pier to another. I know that refunds are being made at Galveston for the drayage, and that where this is done, the carriers applied a shipside rate and also apply a penalty of 6½¢ per 100 lbs. for a second concentration where their investigation discloses any cotton has been concentrated a second time. I presume that that is done also at Houston. A large amount of cotton moves from Houston to the port of Galveston by boat. (R. 65). I presume that a large amount of that has to pay the 6½¢ penalty for a second concentration. The warehouse and the cotton concentration companies on the wharves are purely merchandising facilities, and it cost them as much to get to the shipside as it does the interior back from the water front compresses, with the exception of a small quantity which they hand-truck when a vessel is there adjacent to the compress. The uniform drayage rate is 18¢ per bale, which applies between any two points along the water front, and which applies from most of the interior plants to any pier on the water front. I do not think that any of the compresses own any of the dray lines, but some of the cotton men own their own drays which they use occasionally when business is brisk. (R. 66). The actual cost of drayage would vary according to the [fol. 57] haul and according to the volume handled.

I find that the shipside or export rates were very generally applied at both the Houston Compress and the Shipside Density Compress where the shipments were consigned

direct to Shipside. It was done in practically all cases. (R. 67).

Under the orders of the Texas Railway Commission the local rate applies to all points on the rails of the Galveston Wharf Company, under Circular #401. If a cotton merchant should induce the Galveston Wharf Co., to lease to him a facility on the water front, under the Railroad Commission of Texas instructions, a local Galveston rate would have to apply to that point. (R. 68). That is the same rate applicable at Houston. The Shipside Density Company has no merchandising facilities, and does not concentrate cotton, whereas the Cotton Concentration Company has no compresses and renders only merchandising services. There is no relation whatever between the two.

My Exhibit A-4 was intended to show that it is possible for cotton to be exported where it has paid a local rate and no further charges. It is immaterial whether the shipment moved through the Shipside Density Press or through a back from the water front press. They all perform the same service for the same price and they all deliver for that compression charge to shipside. The press back from the water front must perform actual drayage service. (R. 71). The back of the water front compress would pay the same drayage that the Shipside Density Compress would, unless these particular shipments happened to be delivered to a ship where they could be trucked by hand from the Shipside Density Compress. If so, the Shipside Company might [fol. 58] have been able to truck it for 10¢. (R. 72).

In regard to cotton concentrated in the interior, moved to Houston and held over there, and then shipped to Galveston for export, they sometimes have to pay a second concentration charge. They don't intend to do that. Most of their cotton would be exported by the port Houston and they would avoid paying that second concentration.

The particular shipment in Exhibit A-4 did reach Galveston intended for export.

WITNESS J. H. W. STEELE

I am President of the Shipside Density Compress Company. There are six compresses located at piers 10, 29,

32, 36, 39 and 40. These compresses were established in 1920. The initial investment was about $775,000.00. It is now incorporated for $650,000.00. (R. 74). We have no storage facilities and no room for concentrating, weighing or clamping cotton. The actual compressing of cotton is our sole source of revenue.

Practically no cotton is consigned to us. It is consigned to various brokers or shippers doing business through the port. (R. 75).

Up to last year it was our practice to make a charge for compression that did not include the drayage and the shipper would pay the local rate into the port, pay the compression charge, and then look after his own drayage and pay that. But the interior presses at Galveston put out a flat rate including drayage to be delivered anywhere on the (R. 76) Galveston water front and we either had to meet that condition or go completely out of business. At present we have a fixed charge of 72½¢ per bale, covering delivery of the cotton at any point that any other press in Galveston will. On that portion of the cotton that might be [fol. 59] delivered to a Steamer at our pier, our advantage there would be the trucking less the 1¢ that we don't get for unloading, which the interior press does get, which would be a saving of about 6¢ a bale on that part of the cotton. About 25% of our cotton is handled that way. We dray the other 75%. (R. 77). If we have only sufficient business to have one plant running, for instance, at pier 40, and if we were tendered cotton at pier 10, we would have to dray the cotton the full distance of the 30 blocks, and unless we had at least 500 bales for pier 10 we would hardly get up steam for it. The location of our compresses has no bearing on it. We might as well be 10 blocks away if we have to dray the cotton, and most of the cotton coming in is handled by dray. (R. 78). Drays are used to get the cotton quickly to the ship. The ships will not move for it.

We receive our instructions to compress the cotton from the shipper, the ship agent and the freight broker. We sometimes know an hour in advance what ship it is going on. We don't often know the destination of the cotton at all. We don't know whether it is going to Bremen or where it is going.

We don't often hold cotton over night. We want to clean up every day.

The practice whereby the compresses absorb the drayage grew up largely last year. With us it came about last year. We had to meet local conditions in Galveston. It was a matter of meeting competition. Our customers are small interior shippers. We have the only compress business located at a port that is independent, there being no cotton shippers interested in it. (R. 80).

[fol. 60] At our compress there is no absorption of drayage or allowance to our company for drayage by the railroads. If the cotton was shipped in on the 80¢ rate, the shipper has 3½¢ less than the through rate. He benefits to that extent, but most of the cotton that we get that way is handled locally in Galveston. (R. 81.) The only allowance to the shipper for the drayage service which we perform is in the rate, in the local bill of lading. We own no drays; we truck. The rate for trucking is 18¢ a bale. The 72½¢ per bale which we charge for compressing covers all the service to the shipper. (R. 83.)

The greater part of the cotton that comes to us is drayed to our compress from the interior concentrating plant back from the water front. It also is delivered to us by the carriers. In regard to this cotton that comes into our compress on a domestic bill of lading, I do not think that any of it is subsequently changed to an export bill of lading. That applies also to the cotton we receive by dray from the concentrating plant off the water front. (R. 84.)

The average rate for the draying is 18¢ per bale. The variation for different hauls is about 1¢. There is a greater variation from presses that are not on the water front, but I think they are all pretty nearly on the same basis unless you go to the Southern Pacific dock or some of the extreme points. The interior presses get 17½¢ and 5¢ for unloading because he is the shipper of the cotton, so he gets 22½¢ as against our plant. We don't get the benefit of the 5¢, it goes to the shipper. As we are not in the shipping business we lose 5¢ a bale as against a firm like McFaddin.

The railroads assess the shipside rate of 83½¢ on all through bill of lading cotton. (R. 86.) We compress that

cotton to high density, and receive pay for that service from the shipper. The shipper makes the reclaim on the [fol. 61] railroad in that case. We don't function in any of the traffic problems at all. (R. 87.) The through bill of lading cotton is delivered on the dock of the steamship company, we get it there, compress it and return it to the dock. Sometimes we have to truck it as much as 400 or 500 feet (R. 88) and the average would pretty nearly off-set the drayage. If the cotton comes to the same pier and is consigned on a local bill of lading, the only difference would be that we might take it to some pier located away from where the plant was, and in that way we would perform more service. In that case, we are making delivery to the steamship for the shipper. (R. 89.) Compresses and all presses make a standard charge of 72½¢ a bale.

Very little cotton is shipped in with directions to notify us of arrival. Last year, we handled 15,000 bales, out of a total of 475,000 bales, on through bills of lading. (R. 90.) The compresses are numbered according to the piers; the piers are numbered according to the streets. Most of the private plants are equipped with compresses.

When cotton goes to a facility that has no compress, the shipper pays the 80¢ rate, and when the shipper elects to export his cotton and have it high densitied at one of our compresses (R. 91) he drays it to our compress, uses that 18¢, then we compress it for 72½¢ and pay 18¢ out of our earnings to get it back to the place where it is going. If a shipper owns his own plant, he gets the 5¢ unloading charge, and he has that advantage over us. We actually unload the cotton from the cars on the local cotton, but not on the through cotton. (R. 92).

The cotton that is first concentrated up-town and then is drayed to us for high density moves on a local bill. He is saving 3½¢ on the rate, but he pays it out in drayage. We unload the cotton that comes in on local bills of lading to [fol. 62] the ship agent. (R. 93.) The shipper gets the 1¢ for unloading, but we do the unloading. (R. 94.)

Some cotton is consigned under a local bill of lading to the ship agent, but not a great deal. (R. 95.)

Cotton moving under a local bill of lading to the cotton centration company, situated on the water front but off from the piers, would be unloaded by the cotton

concentration company, and stored until ordered out by the shipper. The shipper might order it to the Shipside compress to some inland compress. During the present season our company has received very little cotton from the concentration company. Most of it has gone to the up-town plants. (R. 96.) The concentration company pays the drayage to the uptown compress. When it is drayed back, the up-town compress pays the drayage because they include the drayage in the rate of 72½ for compression. The plant of the cotton concentration company is about 200 or 250 feet from the warehouse at piers 29 and 30. (R. 97.) It is my impression that the cotton concentration company charges the shipper for the drayage from their plant, and that it is included in the storage rate.

The shipper directs the movement of the cotton to our plant, where the cotton moves on local bills of lading. Most of it is consigned to freight brokers who act as agents of the shippers. (R. 98.) Very little cotton moving in on local bills of lading is consigned to a ship agent. Cotton that goes to our compresses from the interior direct under the local bill of lading is delivered to us by the carriers, and if there was a considerable number of bales the car would be switched directly to our compress. If there were only a few bales, the car would go to the mixed platform, and the cotton would be drayed to our compress. It is a matter of [fol. 63] the convenience of the carriers.

Witness Lawrence Westbrook

I live at Waco, and am Manager of the McClenan Farm Association, (R. 100) a co-operative marketing organization of the farmers. My duties are primarily the marketing of cotton, and I have held that position three years. We handle a good deal of cotton for the Hill County Cotton Association. I was in the cotton business prior to assuming this work, and I am familiar with the method of handling and shipping cotton in Texas. (R. 101.) We sell to the highest bidder, assemble and concentrate largely at Waco, also at Hillsboro and McGregor and then ship to our order, notify the parties we have sold to. We attend to the load-

ing and the shipping and ordinarily we ship under the local bill of lading. Sometimes we use the export bill of lading. Usually we do not pay the freight. If we do not pay the freight, of course it is not included in the purchase price that we receive. We pay a domestic rate of 80¢. (R. 102.) I know that there are some compresses at Galveston and Houston located back from the water front, and some on the water front, and I should think that the parties who have their compresses located on the water front, and do not have to pay the 18¢ drayage, would be able to pay more for the cotton than those who had to pay the additional charge of 18¢. There is a very narrow margin in the handling of cotton, and I think that difference would have a very considerable effect. (R. 103.)

The difference of 18¢ that exists as against the back from the water front buyer, will eventually present free and unrestricted competition, I think. It probably has to some extent already, with the margins as narrow as they are. It might mean that some people who are at this time, and [fol. 64] have in the past, purchased cotton from us, would be compelled to go out of business (R. 104). They could not compete with the people who are favored by having a superior preferential location. The people I represent are interested in maintaining free competition, because the more competition we have, the better chance we have to get a higher price.

Cross-examination (R. 105):

Our organization is not connected with the Texas Farm Bureau Ass'n. I think they concentrate cotton at Houston. The cotton we sell is equally divided approximately between Galveston, Houston, Waco and Dallas. (R. 108.) We ship our cotton in accordance with the instructions of the company that is buying it. We could sell to some firm that is concentrating at Houston or Galveston, and using the various water front facilities there. I think some of our cotton moves to the Shipside Density Compress at Galveston. We handled approximately 27,000 bales last season. Most of our cotton is sold f. o. b. the compress. The compresses at Waco and Hillsboro are owned largely by men not in the cotton business. (R. 111.) I am not in a position

to testify about how the cotton is handled after it gets to Houston or Galveston. I am interested simply in maintaining free and unrestricted competition between the buyers.

WITNESS BAYLISS E. HARRISS

I am a cotton merchant in the firm of Harriss, Irby & Vose. The principal office is in New York and our head office for Texas is in Galveston. We have our own warehouse in Galveston—about one mile and one-half from the wharf, on the average. The nearest wharf is about ten blocks. I have been President of the Galveston Cotton Exchange and Board of Trade for nearly two years (R. 113). [fol. 65] I have been in the cotton business in Texas and Oklahoma for eighteen years. I have been in the cotton business 24 years. There is probably about seven and one-half million dollars invested in warehouses back of the water front in Galveston. A rough estimate of the value of the concentration company's warehouse near the wharf is about three-quarters of a million dollars. I am familiar with the method of handling cotton at Galveston. (R. 114.) On cotton purchased by us and consigned to our place of business at Galveston, on a local bill of lading, we pay the local rate of 80¢ per 100 lbs., and then we have to pay 18¢ per bale to have it drayed to the water front if we export it. The drayage company is a corporation and an independent concern. We are not interested in it financially. (R. 115.) As a margin in the cotton business, 18¢ per bale is considered a very vital and important part of the whole profit. 18¢ per bale would represent perhaps one-fifth to one-fourth of what any exporter could reasonably hope to make in the way of net profits on a legitimate basis. It would effect the price which we are able to pay for cotton to the producer. (R. 116.) We built the improvements to our plant back from the water front in 1914, and at that time there were not in Galveston, Houston, or either of them, any water front warehoueses or compresses, other than those operated by the wharf company. We had no reason to believe that such would be erected. At that time, the rate for local and export was the same, which I believe

was an ideal situation. The railroads refunded us the drayage on cotton which had not been concentrated more than once in the interior. At that time it was impossible for us to have foreseen any change in that condition. (R. 117.)

Cross-examination:

Prior to the war period, I think the allowance for dray- [fol. 66] age was approximately the same as the difference between the local and export rates as they exist today. At that time, the only difference between the local and the export rate was represented by the wharfage. I think the difference between the two was established at the time the railroad administration was granting an increase in rates. (R. 118.) I think that the average time that we store cotton is about three weeks the year around. (R. 119.)

At one time we considered purchasing water front property, but decided that in view of the fact that the rates were the same, and in view of the refund allowed by the railroads for drayage, there would be no advantage to us.

I think at the present time that there should be one rate for both the domestic bill and the export bill and that the railroads should refund the actual cost of drayage or else perform the service of switching for their own account. (R. 120.) I feel that at the present time I am being forced to compress cotton for 54½¢ per bale, on account of the 18¢ drayage charge. The compress at the wharf has to pay the same drayage charge from their compress to the vessel here in Galveston—about 18¢ per bale freight rate higher than the water front man at Houston. We are allowed 48 hours demurrage, and I understand that the water front piers, or warehouses, are allowed five days free time. Normally, we do not pay much demurrage, but last year we got congested and paid a good deal. (R. 124.) The water front warehouse has an advantage over us on the small percentage of cotton that they are able to load without paying all of that 18¢ charge, namely, when the ship is placed just right. At the time when the two rates were the same, the railroads only made refund on cotton that had not been concentrated more than once. I believe that the refund should be made on all cotton, whether it has been concentrated once or twice. (R. 125.) We think we should have that privilege

[fol. 67] at Galveston on cotton shipped to us from Houston. We do not adk for one more concentration privilege at Galveston than they have anywhere else in the state, because the cotton at Houston would go to the Shipside (R. 126), (R. 127).

The back from the water front warehouses and compresses at Houston are exactly in the same position as the back from the water front warehouses in Galveston. (R. 128.) The water front compresses at Houston do not have to pay the 18¢ drayage. Our contention is that the discrimination lies between the up-town presses in Galveston and in Houston on the one hand, and the shipside press in Houston on the other. Our firm decided not to locate at the water front in Galveston, because we learned that the railroads made the refund for drayage only when the drayage was actually done. It would have been more expensive to locate at the water front (R. 130). A geographical location would have been of benefit to us, if we could have induced the Steamers to run jitney service to our warehouse. If we had put in a large facility serving other shippers we might have induced the Steamships to come there. (R. 131.) It has always been a well defined principle of the railroad and of the Commission to make a sufficiently low rate for delivery back of the water front to take care of the delivery to the water front. I know that the Houston people have invested a great deal of money in building facilities adjacent to deep water. Also a number of concentrators, exporters, and warehouse men were influenced to invest considerable sums of money in back from the water front warehouses, (R. 132) and I think that they should not now be placed at a disadvantage. I think a lower rate should apply to the facilities back of the water front than that which applies to facilities on the water front. I would say that it costs the water front compresses a reasonable amount for [fol. 68] trucking to get cotton to shipside. That amount would vary according to where the cotton is in the plant and where the ship is berthed. (R. 133.) I do not think that the cotton concentration company at Galveston can get cotton through the water front cheaper than we can. I think that the location of the cotton concentration company is not so very near to a pier which is used for cotton. The nearest pier has been used for unloading sulphus, but it

could be used for loading cotton. (R. 134.) The Shipside Density Compress Company conveys about 25% of its cotton to the ship by truck, and that is a cheaper operation than drayage. That has been going on three or four years, and we have not experienced any great difficulty from that competition. We have a compress, but do not solicite business from the public generally. (R. 135.) If we were soliciting business from the public at large, we would want to put it in the most advantageous geographical location. Until recently the margin of profit in cotton was much greater than it is at the present time. Considering the services my organization performs, if we could not make at least a dollar a bale profit out of cotton, we would get out of the market and quit business. (R. 136.) There are about 20 other compresses and warehouse facilities in Galveston, all of which except the cotton concentration company, are located distinctly back of the water front. I think that the difference of 3½¢ per 100 lbs. is a fair average and ought to be maintained between the local delivery and the shipside delivery. (R. 137.) Warehouses at Houston used by merchants to perform merchandising services should be assessed the same rate to get the cotton into their plants. The difference at Houston, should be the actual cost of bringing the cotton to shipside. I do not think that this situation is analogous to a case where there are two wholesale houses, one with a spur track and one so located that it cannot have a spur track. (R. 140.)
[fol. 69] I do not think it would be fair to take the average cost of the various compresses in getting to the ship tackle and make that the difference in the rate. I think that the railroad should refund to the concentrator only what he has actually paid out for drayage, supported by a bill from his drayman, whether that be 6¢ per bale or 10¢ per bale or 18¢ per bale. (R. 143). I do believe that a maximum should be fixed, that in no case should more than 20¢ a bale be refunded. As long as I have been in the cotton business, it has been the practice of the railroads with the approval of the Interstate Commerce Commission to equalize the concentrators regardless of where they are located. Whether at Dallas or Ft. Worth, or back of the water front at the port. (R. 144). On the basis of that principle, many shippers and concentrators have spent large sums of money

in the interior and back of the water front concentrating warehouses.

We have practically no cotton coming through on export bills of lading. As shippers, our firm puts a considerable amount of cotton through a number of compresses and warehouses at Galveston, besidew the one we own. At times we buy a good deal of cotton at Houston, and have it delivered to us f. o. b. shipside Galveston. (R. 145). We make no direct exportation from Houston to Galveston. There are a number of exporters in Galveston who have facilities which include a compress. There are others who simply have a warehouse and they send their cotton to a compress when they wish to have it compressed to high density.

On cotton originally concentrated at Houston, which we buy and take to our plant at Galveston and compress there, and take it to shipside under our compression charge, we pay 80¢ plus the expense of drayage and wharfage, if we concentrate it again at Galveston. (R. 146). If we had a single rate applying in Galvetson and handled the cotton in the same manner, under the existing tariff, the handling at [fol. 70] Galveston would constitute a second concentration; and a penalty of 6½¢ would be imposed. The shipper would pay that. (R. 147).

WITNESS D. C. REED

My firm is E. H. Perry & Company, Austin, Texas, Cotton Merchants. I have been in the Cotton business in Texas since 1914, and prior to that I was a country merchant handling general merchandise. We concentrate our cotton in Galveston principally, and have facilities there for that purpose, consisting of a block of ground with a warehouse. (R. 148). Our warehouse is back of the wanter front. When we purchase cotton in the interior, we ship to Galveston and concentrate at our warehouse there, paying the rate of 80¢. It costs us 18¢ per bale under a drayage contract, to get our cotton from the warehouse to the shipside and this makes our total cost about 83½¢ per 100 lbs. The drayage is handled by Hanson & Sons, and is a bona fida charge, actually costing us 18¢ per bale.

Our firm is not interested in the drayage charge, and does not participate in them. I understand that the drayage charge in Galveston is uniform. I understand that some of the warehouses and compresses located on the water-front do not have to pay a drayage charge delivered to the ship. I reason that they have an advantage of 3½ points. Under competitive conditions in handling cotton, I consider that difference matterial. (R .150). This places the back from the water front men at a distinct disadvantage.

In unloading our cotton at our warehouse in Galveston, we have to truck it some distance. I would not say that I am perfectly familiar with the trucking service of the Houston Compress Company at Houston, shipside. In answer to the question whether we perform almost as great a service at our warehouse at Galveston when we unload that [fol. 71] cotton out of the cars as the Houston Compress Company does at Houston, I will give you my version of that, and how I arrive at the conclusion that this difference in the freight is really a net difference or a net profit to the warehouse located on the water-front. I understand that some of the more modern warehouses on the water front are only about 200 feet deep back from the waterfront, and allowing for the pier, I should say that more than half of the warehouse would come within 200 feet of the ship's tackle. (R. 151). I think it can be shown that it cost the [fol. 72] average warehouse in Galveston as much money to move the cotton to the run-ways for the drays as they require it to be, as it would cost a warehouse one-half of which is within reach of the ship's tackle to move it up to within reach of the ship tackle. I conclude that the difference in the rate would be a net profit to the water front warehouse. In rare cases we buy cotton which has already been concentrated once in the interior. (R. 152). If we have to assume an additional charge of 18¢ per bale above what the shipside men have to assume on that class of cotton, that would place us at a disadvantage to that extent, and would discourage us from buying that kind of cotton. Naturally we buy where we can eliminate that charge. (R. 153). Since I have been in the cotton business, it has been the custom of the carriers to equalize all the concentrators regardless of where they are located. That is good business to maintain all cotton concentrators on an

equality, and is unquestionably good for cotton farmers and producers to maintain unrestricted competition among the cotton exporters.

Cross-examination:

I have always understood that the difference between the domestic rate and the export rate was intended to equalize the interior concentrator who could ship to the shipside direct on the through bill of lading with the port concentrator back from the water front who has to pay drayage to the shipside. As a result of competition between the compresses, the practice has grown up of making a flat charge of 72¢ for compression, and putting the cotton to shipside for that charge. This practice does not enure to the benefit of the shipper. If a shipper drays his cotton to a compress back of the water front after it was compressed, he would then have to dray it again to the water. There are two drayages involved when you handle it back of the water front compress. It does not amount to any- [fol. 73] thing in the end, for the reason that this back of the water front compress pays one drayage, there are two drayages involved. The result is that the man who handles his cotton that way still has to pay one drayage, and the drayage added on to the domestic rate makes the export rate. (R. 156). It is true that quite a lot of cotton comes down to Galveston which does not go into the warehouse at all, but comes down via rail and upon arrival is ordered to a compress. That cotton is put to the compress at the 80¢ rate, the compress performs the service of compression and then drays it to the shipside. We pay the compress 72½¢ for compression, and he does not refund us our drayage, since in most cases it is necessary for him to dray it again. (R. 157). We are back of the water front in Galveston, and in practically all instances, the cotton which comes down to us is actually taken into our house (R. 158). The compresses have not always absorbed the drayage. (R. 160). That is a recent thing, resulting from competition. When they put these compresses on the water front, the compresses back from the water front had to absorb that charge, or lose all the business.

We have had our warehouse in Galveston leased since 1914. We have only recently acquired it. It covers about

one block. (R. 161). We have two drive ways through the yard, and have to truck the cotton up to where it is accessible to the dray which come right through the warehouses. The maximum distance we would truck it would be about 280 feet, and I should say the average would be about 75 feet, the average trucking. (R. 163). I am not familiar with what it costs us to truck our cotton or with what it costs the Houston Compress Company to truck cotton there. My judgment is that there is not much difference. (R. 163). If it cost the Houston Compress more, their saving would be reduced to just that extent. I am sure that there is a saving to them. I don't pretend to say exactly what it is. My judgment is that it is practically the entire amount of 18¢ per bale. We have had water front compresses at Gal- [fol. 74] veston three or four years, and we have not felt that they had any advantage over us as they are situated at Galveston.

The railroads in Texas charge a penalty of 6½¢ per 100 lbs. for a second concentration. (R. 164). They do not charge for the first concentration. (R. 165). I think it would be fairly reasonable that cotton previously concentrated should go to Galveston, and that we should have an absorption of our drayage to shipside on that cotton. We do not operate a compress at Galveston. The charge of 72½¢ for compressing includes in it 18¢ per bale for drayage. If a compress at Galveston would offer to compress our cotton at 54½¢, provided we pay the drayage, it would be the same thing. (R. 166).

WITNESS K. TIDEMANN

I am a cotton merchant at Galveston. We have no compresses, only a warehouse, concentration yard. It is back of the water front. I have been in the cotton business in Texas twenty years. Our cotton comes into Galveston on domestic bills of lading at the 80¢ rate. (R. 167). It costs us 18¢ per bale drayage to get it to the water front, and that equalizes the export rate of 83½¢ per 100 lbs. I agree with Mr. Reed's testimony that, if the amount of trucking done by the water front people is about the same, as the amount of trucking that we do in concentration yards and

warehouses back of the water front, the advantage to the water front people would amount to 18¢ per bale. If their trucking amounts to somewhat more, the difference will be proportionately less. The difference is a very material part of the net profit. (R. 168). It is a very serious handicap to operators who have back from the water front facilities, both at Galveston and at Houston. Cotton people are operating on a very narrow margin of profit again, just as [fol. 75] they were before the war. Before the war a net profit of 50¢ a bale on the season's turn-over was a very large profit. In my experience in the cotton business, I have always found that the cotton exporters were equalized whether they were located at the port or in the interior. That is decidedly the best policy for the cotton trade as a whole and for the growers and exporters in particular. (R. 169). In regard to cotton which has been previously concentrated in the interior and then shipped to our warehouse, if we could not get our refund of 18¢ per bale, we would certainly make our prices accordingly and would discontinue buying that cotton as much as possible. The man at shipside would have an advantage over us of 18¢ a bale on that class of cotton.

Cross-examination:

The cost of high density compressing, including delivery to shipside at Galveston, is 72½¢ a bale, and the rate on local shipment into Galveston is 80¢ per 100 lbs. (R. 170). The Steamship people make a difference of 15¢ per 100 lbs. between standard compressed cotton and high density compressed cotton, which results in a slight profit to us by having the cotton compressed to high density. But this difference in the steamship rates is an arbitrary difference which may not last. When the steamship people need cotton, they make better rates on standard compressed cotton. (R. 171). I pay 18¢ per bale for draying the cotton from our yard over to the high density compress, and I do not recover that 18¢ from the railroad (R. 172). The cotton is brought in to the Moody Compress on drays for high densitying, and they perform that service for 72½¢ per bale and deliver it to shipside; but if it is brought into them by car, they make a flat rate of so much per bale including one month's storage, weighing, sampling, etc. I

am sure that a Galveston compress would be willing to [fol. 76] compress our cotton for 54½¢ per bale to high density, provided we dray it to shipside, because I know that they are paying 18¢ per bale for drayage. (R. 174). The shipper determines whether or not the cotton is to be compressed to high density. The Steamship people simply make a difference of 15¢ per 100 lbs. (R. 175) between high densitied cotton and standard compressed cotton. I doubt that this differential in the ocean rate will last very long.

WITNESS A. S. L. TOOMBS

I reside at Galveston, Texas. (R. 176). My firm is the Southern Products Company, with the Agency at Galveston, and the head office at Dallas. We compress cotton at Galveston. We charge 53½¢ per bale for compressing, and 19¢ per bale for delivery, making a total of 72½¢. We render our statements and bills according to that decision. We are located back of the water front. When cotton is moved from our plant by drays, we are at some expense in handling it to the drays, in assembling the marks when the cotton is not high densitied and in moving it from the compress to a position where the dray can pick it up when it is high density compressed. In assembling it for the dray if it is not high density compressed, the cost would be considerable. But where it is moved from the high density compress after it is high density compressed, the charges would be nominal—possibly an additional charge of 5¢ per bale. Cotton delivered at our compress from the interior on a local bill of lading, the rate is 80¢ from Texas common points. It costs us 19¢ a bale for drays to get the cotton to shipside. We pay 19¢ whereas our competitors pay only 18¢, because we are a little further removed from the water front. (R. 178). We have a contract with the drayage company at 19¢ per bale, which provides that if in any calendar month we dray as much as 20,000 bales, the rate [fol. 77] slips back to 18¢ per bale. We have two compresses. From the buying end of the business, 18¢ per

bale would be quite an item to have to compete with. If one rate were established on cotton which is concentrated in the interior before shipping to us at Galveston, we would have to be protected by not having a penalty for the second concentration, in order to compete with the shipside plants, Anderson Clayton Company or the Houston Compress Company. (R. 179). Over eight years we have averaged about 140,000 bales a year through our Galveston plant. Possibly 70% of that is bought from interior concentrators and concentrated the first time before we buy it. On that cotton we would be at a disadvantage if we were assessed a penalty in order to deliver it at shipside, so long as our competitor having a shipside location would get it delivered for 18¢ or 19¢ per bale less. The unit of price for cotton is by the pound, (R. 180), and the loss of 18¢ per bale would make a difference of approximately 4/100¢ per pound. That difference is a disadvantage in meeting competition; even as little as 2 points is sometimes a disadvantage. We do not store a great deal of cotton for the public. (R. 181). The outside accounts amount to 15% to 20% of our business per year, and we make them the same charge of 53½¢ for compressing, and 19¢ for delivering to shipside. (R. 182).

Cross-examination:

My concern and the Southern Products Company are identical, and we charge the Southern Products Company 53½¢ for compression, and they pay their own drayage with a separate account. We have been making bills for other people showing separately 53½¢ and 19¢ since the beginning of 1922, 1923 season. (R. 183). That is, since more than a year ago. As a general rule we do not perform general merchandising services for other concerns. [fol. 78] I still feel that the rates should be lower for domestic delivery than for export shipside delivery. (R. 184). The Southern Products Company ship their cotton in to our compress at Galveston at the 80¢ rate. (R. 185). They pay 72½¢ to have it compressed to high density and delivered to the shipside. They receive back from the Steamship Line 75¢, or 15¢ per 100 lbs., for having it compressed to high density. (R. 186).

WITNESS I. M. GRIFFIN

I am Traffic Manager of the Geo. H. McFaddin & Bros. Agency, cotton merchants at Waco, Texas. I have been in the cotton business since August 1st, 1918, and prior to that I was Freight Traffic Mgr. of the Texas & Pacific Railroad and engaged in traffic with the railroads from 1893 to 1918. (R. 189).

We concentrate most of our cotton at Houston, and Galveston, Texas; some cotton is concentrated at interior compress points. At Houston we have a compress and warehouse with a capacity of about 17,000 bales, located back from the water front near the I. & G. N. Passenger Station. At Galveston we have a large warehouse with two complete compress plants, which have a capacity of about 20,000 bales, located back from the water front some little distance. (R. 190). The cotton we buy at interior points moves to Galveston or Houston on local bills of lading at the rate of 80¢ from Texas Common points. We have compresses at both places equipped for both high density and standard compression. Cotton that is received at our plant in Houston on the 80¢ rate, must be loaded into box cars, and switched down to the docks. (R. 191). It costs [fol. 79] 8¢ to get the cotton from our compress at Houston to shipside. We would get a through bill of lading and by concentration refund, we would get a refund of that 8¢ down to the 83½¢ export rate plus wharfage charge. It would thus cost us 83½¢ per 100 lbs. plus wharfage to get the cotton to shipside. If we do not ask for a through bill of lading, we employ a local switching rate, which varies in accordance with the destination of the shipments; if a one line switch, it would be $8.10 per car; if a two line switch, it would be double that. We would pay the cost of unloading. (R. 192).

At Galveston our cotton is usually drayed from our plant to the piers on the water front. The cost of draying averages 17½¢ per bale. That cost would be in addition to the 80¢ rate. Cotton moves to the Houston Compress Company on the 80¢ rate, to be shipped out from there, and if it costs us more to move our cotton to shipside than it does the Houston Compress Company, we would be at a disadvantage to that extent. (R. 193). The advantage would be the difference in the rate of 83½¢ which we would have

to pay to get our cotton to shipside and the 80¢ rate paid by the Houston Compress Company. There is an intercity switching rate which I am not certain about, but it would be in my opinion in excess of the cost of delivery of cotton by the Houston Compress to shipside. I think that rate is $8.10 for one line, and $16.20 for two lines. It would not apply on export cotton. (R. 194). I refer to that plant of the Houston Compress Company, located on the water front, and not the one back from the waterfront.

The cotton market has returned to a normal condition, and small items of cost are very important. A difference of 1/32, or 1/16, or 1/8 is a very determining factor with respect to the purchase of cotton. I am familiar with the trucking of cotton to delivery to the drays at Galveston. [fol. 80] Such trucking involves an expense which varies according to the distance we have to truck the cotton.

The theory of concentration is the protection of a through rate. It follows that the same rate would be protected to all industries in each locality to the same destination and from the same points of origin. (R. 196). The policies which the railroads have adopted of delivering cotton to shipside at the same cost to all concentrators, regardless of where they may be located, whether at the port or at the interior point, is a good practice. It is essential for the cotton trade as a whole and the cotton producer in particular. If cotton is previously concentrated before it arrives at Houston or Galveston there is a charge at the present time of $0.06½ for the privilege of a second concentration. (R. 197). If the same rates were established for export and local shipments it would be necessary to employ the concentration privilege to move the cotton from the industries back of the water front at Houston to shipside, and if you add to that a rate of 6½¢, and if the industry at the water front does not have to employ that second concentration, he would have an advantage of 6½¢ per 100 lbs., which is a very considerable difference. My firm does not purchase much of this cotton in the interior which has already been concentrated. We would avoid buying any cotton that had been penalized in that manner. That would restrict the number of purchasers for that kind of cotton. (R. 198). I think it would be fair to establish a rate to the

industries back of the water front the same as the rate to the industries on the water front, and that that rate from common points should be 83½¢, which would mean that there would be no reduction in the revenues of the carriers and no penalty to the men handling the cotton back of the [fol. 81] water front. The carriers should move all of the cotton from the plants back of the water front to shipside without further cost to the man who has paid 83½¢. That should be done regardless of whether or not that cotton has been previously concentrated. That would put everybody on the same basis. The interior man who ships from the interior should not be overlooked. It is not economical to force any (R. 199) business into restricted channels. It is not fair to the interior man and to the industry to force him to come down and put his concentration plant at the port. It is not fair for anyone to force him into a certain area, and as you restrict that area, you penalize the majority of those engaged in that industry, and you are placing a premium, as I see it, upon location. You make those locations prohibitive and it takes a considerable cost to put in a plant. I think a man is entitled to the advantages to be derived from a modern plant to the extent of saving in labor costs and in actual handling, but I don't think that there should be any adjustment or application of rates that would give one industry in the same town a lower rate than applies to other industries. As long as all concentrators and exporters could come down to shipside at the same cost, there could be no cause for complaint. (R. 200).

Cross-examination:

Our complaint exists at the present time. If a rate of 80¢ applies on cotton to a plant on shipside, and if that total cost to reach shipside is less than the cost that we pay, we are at a disadvantage. We have been aware of this disadvantage for several months, since the present cotton season began. (R. 202). I do not know about compresses [fol. 82] on the water front at Galveston; we have never employed any of them.

We filed an appearance in Docket 13,991, the Weatherford Crump case. At that time they stated that the movement of cotton back of the water front was not involved, and our statement was in that case that to the extent that

the movement to the compresses and warehouses back of the water front were involved, we would be at a disadvantage. I affirm my testimony in that case.

Our firm does a very extensive business. (R. 203). It has been in Galveston for a number of years. We have had a warehouse and concentrating plant at Houston for three years. Until the present year, we had only a warehouse at Houston which was leased from a railroad. We placed a compress in that warehouse this year. (R. 204). We have both a standard and high density compress. At the time we installed our plant at Houston, we knew that there were compresses on the water front or near the water front. The correction of this disadvantage had been discussed prior to the time that we installed this compress. We felt confidently that this disadvantage (R. 205) would be removed. We could not see how it could continue, and we were willing to take our chances and engage in this business because we did not feel that plants located back of the water front should be at a disadvantage.

We have had a plant at Galveston for many years, and there we pay the 80¢ rate. We merchandise the cotton in that plant, re-handle, grade it, assemble it in lots, and ship it out either by rail or water. (R. 206). When we get ready to move it out of the plant at Galveston, we dray it to the water front and pay the drays for taking it to the water front. We can also have it switched and pay the [fol. 83] switching rate. We could also do that at Houston, by paying 8¢ per 100 lbs. and securing a refund. At Galveston the drayage equalizes the difference between the local rate and the export rate, less the wharfage, and it would be troublesome to pay that drayage and call on the railroads for a refund. (R. 207). We can use the switch line, but I don't understand that that can be done at Houston. At Houston the cost of drayage would be considerably more on account of the long haul. (R. 208). I don't understand that you can employ the local switching rate at Houston without a charge for shipside delivery. I do not think that you can do it at Galveston either; we have never employed it for the simple reason that we can do it by using drays. (R. 209). I do not think that we have exported any cotton at Houston, but we have engagements made and foreign contracts at Houston, and we antici-

pate doing it (R. 209 B). I am not familiar with the switching or draying costs. I am not familiar with the conditions at Houston, but I do not think that the same switching and draying privileges would be available there at the same cost. I think the cost would be prohibitive there on account of the long distance. (R. 210). My opinion would be that the cost of delivering to shipside would be 3½¢ per 100 lbs. over the 80¢ rate. At Galveston the ships are allocated at various berths over a front extending over a distance of some two miles or more, whereas at Houston the vessel either completes its cargo at one pier or shifts from one location to the other. At Galveston the cargo goes to the boat instead of the boat going to the cargo. (R. 211 A). I don't think that we have shipped through Texas City for several years. We have a concentration plant at Texas City and moved it to Galveston. We employ a concentration privilege at Texas City and pay the same rate we would pay from point of origin to Texas City. (R. 211 B). Cotton concentrated at Texas [fol. 84] City and moved to Galveston for export would be high density compressed at Galveston. Such cotton would go to our warehouses in Galveston. We have storage space in a plant in Texas City somewhat removed from shipside, and we used that when we became congested at Galveston. We have been congested at Galveston at various times when the movement was heavy. (R. 212). We do not ship out from Texas City, because usually we do not have the steamship service at Texas City.

I do not think that consideration should be given to the advantage that a cotton firm may have in the location of its plant for concentration. A man is entitled to his faith and his energy and the results to be obtained from it in arranging his plant so that he can operate more economically than some other man, but I do not think that the location of the plant should govern the through rate or the total rate applied. (R. 213). Whether or not the location should govern the rate into a plant, depends upon the extent to which you could police the cotton movement. There has never been a clear cut decision as to what is the line where local delivery ends and shipside delivery begins. Our proposition involves making the rate 83½¢ inbound to everybody. (R. 214). If the cotton was shipped out

by rail, you could get the protection of your through rate, whatever it might be. We are not interested, except perhaps as a stockholder, in the compress at Waco. We have nothing to do with the operation of it.

Before we installed the compress machinery at Houston, we already had the warehouse plant. It is easily reached and has quick switching facilities, and time is an essential factor in the handling of cotton. (R. 215). The plant was leased from the I. & G. N. I do not know that we [fol. 85] could have established a plant at the water front. Such property is expensive. A man does not feel that he should be forced to any portion of the city to do business. It is more expensive to get a water front location. I don't think a man has or should enjoy advantage of a location where he has paid a premium to get at a point where he could deliver his cotton direct to a ship as contrasted with my plant where I can get quick switching service. (R. 216). I do not think that the rates should give the water front owner an advantage. (R. 216). My proposition of an 83½¢ rate back from the water front the same as to the water front, regardless of whether the cotton had been previously concentrated or not, would involve a second concentration in some cases. That should be without charge. I do not think that the concentrator at Dallas would complain about that. (R. 217). I cannot conceive of an instance in which the ordinary plant or ordinary cotton man would want cotton concentrated at one point in the interior for the purpose of merchandising and again concentrated at a second point in the interior, because if he had the second point in the interior he could ship from that second point direct to foreign destination. I do not know whether or not there is considerable second concentration at Dallas. (R. 218). I think the interior men would say that the advantages of getting everybody on the same basis would outweigh any disadvantage that he might have as to that little portion of his movement that he would want second concentration on in the interior.

If it is necessary to make an adjustment or exception on the so-called second concentration privilege at Houston or Galveston, I think it should be done without cost. (R. 220). I see no reason why you should not grant Houston second concentration. (R. 221). The cotton that goes from our

[fol. 86] plant at Houston to Galveston has not been concentrated. (R. 222). I cannot conceive of a man concentrating cotton in the interior and then concentrating it at Houston again, and then sending it to Galveston. (R. 223). [fol. 87] Up to the present time when we have brought cotton into Houston it has been previously concentrated, concentrating it again and possibly compressing it at Houston, and then shipping it to our warehouse at Galveston, we have paid 6½¢ for the concentration here in Houston. My proposal is not to make that second concentration free. My plan has reference to a certain amount of cotton that has been previously concentrated in the interior unknown to the purchaser. Under this arrangement to bring about an adjustment that will be fair to all in my opinion, the man that is back of the water front should have some protection on that small percentage of cotton to enable him to get it to the water front without incurring the 6½¢ penalty. (R. 224). If the business is handled in the way that we handled it today, that second concentration at Galveston or at Houston, would be without charge in my plan. The trouble was formerly that we had no compress at Houston and had to send the cotton to Galveston to be compressed. (R. 227). The great majority of cotton that we bring into Houston will be exported through the port of Houston, and not through the port of Galveston. The charge the compress might make for compression has nothing to do with the rate adjustment. (R. 230). In buying cotton, we consider whether or not it has already received one concentration. We ship all of our cotton from actual points of origin to Houston and Galveston, and it is part of my duty to get the concentration put where it belongs and not against our shipments. (R. 234).

WITNESS I. H. KEMPNER

I am a Cotton Exporter and Banker at Galveston. (R. 235). I have been in the cotton business since 1894. I have been a director in the Galveston Cotton Exchange [fol. 88] since 1895 and was President of it for about 10 years. My warehouse and concentrating sheds and com-

press at Galveston, are known as the Merchants and Planters Compress and Warehouse Company. They are located back of the water front some distance. Our average haul is about one mile and one-quarter. (R. 236.) Our cotton comes in on the 80¢ rate, and we concentrate it at Galveston. It is drayed from there to shipside, and that costs from 18 to 20¢ per bale from our plant. An advantage enjoyed by a competitor of 18¢ per bale would be a serious disadvantage to us and to any other competitor. (R. 237.) Eighteen cents per bale is a material factor in the net profit on cotton. A number of firms located at Dallas, Waco and other points use our facilities and our compress. Their cotton is shipped in on local bills of lading, sampled by us, classed, high densitied and then delivered to shipside (R. 238). We charge 75¢ per bale for compressing and delivering to shipside. We do our own draying and it ranges from 18¢ to 20¢ per bale. It has been the custom for a good many years, to equalize all concentrators and exporters regardless of where they are located. Relying on that custom, we constructed an expensive facility back of the water front at Galveston. We considered a water front location, and were told that the rates were equalized and that we could not get the ships to moved up from their designated berths in Galveston to take on cargo. (R. 239.) Greater competition is to the interest of the farmer with cotton to sell. We do not handle much cotton that has already been concentrated in the interior. If there should be an added penalty on that cotton, we avoid as much as possible buying that kind of cotton. (R. 240.)

[fol. 89] Cross-examination:

We solicit the business of a few large firms rather than numberous small ones. We render a merchandising service, and make a charge for that. When we considered locating at the water front in 1912, we thought of leasing undeveloped wharf property, where the wharf facilities already existed. The Galveston Wharf Company and the Southern Pacific Railroad control the existing wharf facilities. The City of Galveston owns 62,000 shares in the Galveston Wharf company, out of a total capitalization of several million dollars subject to all the bonded issues. The cotton concentration company is located on the premises of

the Galveston Wharf Company near the water front, but it has no compress and does not offer complete facilities in my opinion. (R. 243.) They render concentration services and make a charge for it. During the war the charge for putting cotton to high density was very liberal, due to the high ocean rates. As the ocean rates decreased, the compress companies had to reduce their rate, as the shipper will not have his cotton high densitied unless he saves money on the ocean rate thereby. Finally the cost of compressing was reduced to 72½¢ including drayage to shipside. That leaves about 55¢ for compression charge. The shipper gets an ocean rate which is 15¢ per 100 less by having the cotton high densitied, and that difference runs a little bit in excess of the cost of compression and drayage. (R. 246.) Therefore, the interior concentrator gets his cotton placed at shipside for a little less than 80¢ per 100 lbs., in addition to what he has paid in additional insurance and loss of interest and other expenses. (R. 247.) The carriers' rate which is now 15¢ per 100 lbs. lower on high density compressed cotton, may be changed at any time. (R. 248.) It is a uniform practice for the steamship lines [fol. 90] operating out of Galveston and Houston, to make a uniform difference in their rates between standard compress and high density compressed cotton at the present time, with the exception of the coastwise line, the Morgan and Mallory Lines, carrying cotton to the New England States, which do not make any difference. The differential between the two classes of cotton has been in effect about two years. Prior to that the differential was larger by reason of the fact that the ocean rates were so much higher. (R. 249.) It is probable that there will be uniform action as between the Steamship Lines, but the amount of the difference between the two rates may change at any time. There has been a difference for many years, and that difference has usually been as great as the charge made for the compression to high density. (R. 250.) Our charge for compression includes also delivery to the shipside and it might include patching, and other incidental services which could be performed without extra cost, but as a general thing it includes nothing besides compression and drayage to the ship. (R. 251.) I know of no reason why the steamship lines could not make a higher ocean

charge from Houston to foreign ports than from Galveston. (R. 252.) I do not think there is any relation between a rail rate fixed by a governmental body like the Interstate Commerce Commission, and a Steamship rate that is fixed by the whim of the Steamship operator. I do think that if a shipper is getting to shipside at Houston cheaper than he can at Galveston or at Galveston cheaper than he can at Houston, it creates a monoply for the benefit of one man, or for the benefit of a favored few, and that the Interstate Commerce Commission should act in such a case. (R. 254.) I think the Commission should act irrespective of how that difference in cost may arise. You might say it arises by these people's foresight, I might say that back of [fol. 91] that foresight, there may be railroad favoritism. The object of the Interstate Commerce Commission and the Texas Commission is to prevent monopolies and favors to a few shippers, whether it is through rebate, whether it is through location, or whether it is through other matters by having an advantage and a strangle hold on the commerce and trade of the country. I think that condition ought to be equalized for the benefit of the trade, just as we today equalize railroad rates so that the railroads may obtain a satisfactory freight rate for the stockholders who put their money into it. (R. 255.)

The export rate was fixed 3½¢ higher than the local rate, for the purpose of equalizing the interior concentrator with the port concentrator. (R. 257.) Then this question of high density became injected into it and competition forced this condition that now exists and I agree with you that I rather think that it has tended to offset the actual equalization that it was originally intended to cover. (R. 258.) I think that the practice of compresses in compressing the cotton to high density, and putting it aboard the ship for 72¢ has tended to up-set the equalization that was established by affixing the two rates. It is possible to deliver cotton at our place at shipside in Galveston at the 80¢ rate because we are forced to shrink our revenues from compressing in order to equalize the rates. The compressing charge should be fixed at the port as it is in the interior. It costs Anderson Clayton as much to compress cotton as it does us, and it costs Anderson Clayton nothing to get it to shipside, whereas it costs us 19¢ per bale. We are

shrinking our revenue, and we cannot afford to do it. We have got to get released. (R. 259.) The interior shipper can ship his cotton to our facility on the domestic rate of [fol. 92] 80¢ and have it delivered to the shipside after compression at that rate. He can also have it delivered to the shipside plant of Anderson Clayton at 80¢. The complaint we have to make is that Anderson Clayton is being paid a compression charge of 3½¢ for a service they do not perform. We are complaining of a competitor who has an ad- [fol. 93] vantage that we think is wrong and should be removed, and a discrimination that exists that he can utilize any time he gets ready to the exclusion of the shipper. (R. 262.) If the up-state compress, high densitying cotton charged no more than the net returns of the port compress, after shrinking its revenue to take care of the drayage, there would be an exact equalization between the two classes of compress.

Witness Emil Eggers

I am Secrtary and Treasurer of the Wylie Nicholls Company, Transfer and Storage. (R. 263.) I have been in the drayage business at Galveston over 25 years. There is an 18¢ flat rate charge for draying cotton at Galveston from various compresses to shipside. All of our customers pay the same rate. We haul for the Shipside Density Compress Company, and the flat rate is 18¢, no matter what the distance. We haul for the Santa Fe and Southern Pacific on the same basis. The rate of 18¢ has been in effect since September 1st of this year. Last season the rate was 17¢. (R. 264.) The 17¢ rate was in effect one season, 1922. Before that the rate was 20¢ on account of labor conditions. We do not haul for the Southern Products Company, for Moody, or for Kempner. McFaddin is one of our largest customers. Bush & Witherspoon, Tiedemann, Southern Pacific, Santa Fe, Tarver Steele, The Shipside Density Company; (R. 265) on account of their greater distances, we would have to charge more for the Merchants and Planters Compress, for the Moody Compress, for the Southern Products Compress. We could not haul for them

for the same price. I should consider a charge of 19¢ per bale from the Southern Products and the Cosho Presses as reasonable; 20¢ per bale for Moody & Company presses would be reasonable. (R. 266.)

[fol. 94] Cross-examination:

The draymen have been making flat rates to all the compresses, except the few I mentioned, for three or four years. Before that there were various rates. The actual cost of delivery to the different piers vary, and we base the flat rate on the average. (R. 267.) In 1919 there was a variation of 2½¢. In 1920 there was a variation from 22¢ to 25¢. We made a flat rate of 20¢ and then 17¢ and now 18¢. These changes were due to labor conditions. (R. 268.) We dray from the mixed platforms of the Southern Pacific and the Santa Fe and the G. H. & S. A. The platforms are away from the water front. The shipside company is the only one on the water front. (R. 269.)

WITNESS H. K. KNOWLES

I represent Crispie & Compnay, offices in Waco, with a concentration warehouse at Galveston. I have been with that company since April 1923. Prior to that time, I was with McFaddin in the cotton business for 14 years. At the present time, I am in charge of the buying and merchandising end of the business of Christie & Company. Our warehouse in Galveston is back of the water front. (R. 271.) We do not have a compress. On cotton shipped from Texas common points to us at Galveston, consigned to our warehouse at Galveston, we pay the 80¢ rate, and it cost 18¢ per bale in addition to deliver that cotton to shipside. That makes 83½¢ total. If a warehouse located at shipside Port Houston, Texas, is able to obtain delivery of cotton at shipside at the rate of 80¢ per 100 lbs., which is 18¢ per bale less than it costs our firm, that would place our firm at a disadvantage. (R. 272.) I concur in the testimony of Mr. Dave Reed.

[fol. 95] Cross-examination:

I do not know that we are at a disadvantage because we do not have a compress. If I had a compress in my warehouse, I could get my cotton into high density, and then get it to the ship at a rate lower by the profit made in compression. I do not know that I am at a disadvantage. I do not know whether they make any money out of the compress or not. I suppose they do. That would depend upon the investment in the compress, the expense of operation, and the volume of business, and the management of it. (R. 273.)

WITNESS T. M. NOWLIN

I am in the compressing business at Shiner, Texas. I have been in that business since 1914, except two years. I am familiar with that business. I have been thrown in contact with the buyers and sellers of cotton in my vicinity. (R. 274.) We are nearer Houston than the limit of the 80¢ rate, and the Houston Cotton Merchant can buy in our territory and ship to Houston for 35¢ per bale cheaper than to Galveston. The rate to Galveston on compressed cotton is the same as the rate on flat cotton. To Houston there is a difference. From our point it is 74¢ on compressed cotton and 67½¢ (R. 275) on flat cotton. The rate started in the tariff as 54¢ but the railroads absorbed the compression, and charged that to the shipper. The Galveston merchants, therefore, have been eliminated from our territory. This year, the Southern Products Company of Galveston bought 100 bales of cotton from our territory by accident, that being the only 100 bales concentrated in Galveston. (R. 276.) The Galveston firms do not even put men there. Galveston [fol. 96] is absolutely eliminated as far as competition is concerned in that territory. The tariff states that the rate on uncompressed cotton is 68¢, but the rate on both compressed and uncompressed to Galveston is 74½¢. The Galveston merchants seldom ever put out a limit in our territory, and do not put their men there. I believe that any [fol. 97] substantial amount that any one cotton merchant might have over the other would tend to eliminate him from that territory. (R. 277.) I favor free and unrestricted

competition among cotton buyers and exporters, regardless of what port or town they might be in. The more the buyer or exporter gets for the cotton, the more he can pay the producer. (R. 278.) I agree with the testimony of Mr. Reed, that the difference between the domestic and export rates will react against the interior market. (R. 279.) The man with the 18¢ per bale advantage over the other man will in the majority of cases buy the cotton, and it will only be a matter of time until they will eliminate the other people.

Cross-examination:

I am in the compress business and provide compress facilities for interior merchants to do their merchandising business and concentrating and also compress for the railroads. I charge 25¢ per bale including all the services we perform and 30 days storage; no charge for shipping flat if it goes to an interior mill; if it goes to the port where there are larger compresses, we make a charge of 50¢ per bale. We never have occasion to ship cotton flat to the ports. The fact that we get the compression on the cotton enables us to render the concentration service cheaper to the merchant. (R. 281.) We make no profit from the concentration charge. Some compresses charge more than 25¢ per bale for concentration. The interior merchant who concentrates at our plant can ship out on a through bill of lading (R. 282). The interior compresses should be protected in the freight rate and in any other rate that might be discriminatory against him because it is of vital importance to the exporter who wants to ship his cotton direct from the interior, and save time and expense. We ship quite a good deal that way. We have one English firm that [fol. 98] buys direct from the interior and ships on through bills of lading, everything from our compress direct to England. I consider the service we perform a valuable service to the trade.

We are within the 210 mile limit, and are therefore on a mileage scale to Houston and Galveston. I have talked with various firms in Austin and Waco, and they told me very frankly that it was not worth while to send representatives to our territory because the cotton was practically all bought by Houston firms, in that territory. (R. 284.) I believe they can ship out to coastwise points, New England

Mills, as cheaply through Galveston as they can through Houston. We are so close to Houston that the Houston firms buy principally through the Houston merchants. We have two f. o. b. men who stay there, and they sell principally to Houston people. We have one man there who is doing export business himself, and is not selling to Houston firms. (R. 285.) One merchant in my town told me that he made 35¢ per bale by shipping to Houston flat, and that he did not give the Houston merchants the benefit of the difference in that rate. I know that a man with 35¢ or 18¢, or even 10¢ is in a position to bid just a couple of points more (R. 286) and two and two and one-half points will buy from 9/10 of the cotton merchants. The average interior merchant will sell to anyone for even one point and a point and one-half more than anyone else. A point is 1¢ per 100 lbs.—5¢ per bale. (R. 287.)

WITNESS HORACE BOOTH

I have been Traffic Manager for the International & Great Northern Railway since 1914. It has been necessary for me to deal, to a considerable extent, in freight rates, tariffs and their application. I have with me Fonda's I. C. C. #135, which states on the title page that the rates [fol. 99] therein will apply on intra-state traffic between points in Texas. (R. 288.) It contains the 80¢ rate. It applies also on inter-state Traffic beween Texas points and from Texas points, Galveston, Houston and Texas City for Coastwise movement; also to Brownsville, Eagle Pass, El Paso and Laredo for export as shown in items nos. 200 to 399, inclusive; also from points in Arkansas. Items 40 to 70 deal with concentration, as applied on intra-state local traffic. These are the rules with regard to concentration established by the railroad commission of Texas. (R. 289.) Item 200 reads as follows: "The intra-state rates shown in items #400, 405, 415, 441 to 400, inclusive, and 481 to 648, inclusive, see exception, will also apply on inter-state traffic as follows; Between points in Texas on cotton and cotton linters in bales and cotton pickings in sacks, actual weight, any quantity, shipped for concentration, storage, classification, inspection, market privileges, remarking, weighing,

compression and re-shipment to points outside the state of Texas under concentration rules and through rates from points of origin to destination or to gulf port, Rio Grande crossing or Pacific Coast ports, or beyond, legally published and filed with the Interstate Commerce Commission." (R. 290.) Item 200 means that a shipment of cotton from Dallas moving to one of the Texas Ports would carry the rate named in the item referred to where the shipment of cotton was for concentration or re-shipment to an inter-state or foreign destination. "Legally published and filed with the I. C. C." means the concentration rules and through rates. Items 400 and 405 carry the 80¢ rate and these items provide in effect that that rate is applicable between points in Texas in common point territory and that the 80¢ rate includes all switching and unloading such as is necessary to effect delivery at points in Texas and to points on the Galveston Wharf Company's tracks, or other tracks, at [fol. 100] destination. It does not include any other terminal expense. (R. 291.) It means delivery on the wharf company's track, but not including wharfage charge. It does not mean to shipside. I make a distinction to delivery to the wharf and delivery to shipside. There is a track on the Galveston wharf, and under this tariff I think our line would be compelled to make delivery on this track. The tariff would not apply if the bill of lading carried a notation for export, and it would not apply if the cotton moved (R. 292) direct to vessel. We have another tariff which specifically applies to cotton for export. Item 120 reads that "All shipments of cotton etc., originating in Texas, are covered by bills of lading which indicate that such shipments are destined to other points in Texas, are subject to this tariff, and all rules and regulations embraced in it, regardless of any notation inserted in the bills of lading, for the purpose of declaring the intention of shippers or consignees as to the future disposition of such shipments." (R. 293.) The export rate applies in spite of this because it is export traffic and so declared. The heading at the top of the page reads "Rules and Regulations Applicable only on Intra-state Local Texas Traffic." The rest of the heading is: "Realroad Commission of Texas Commodity Tariff 1-G." If it were export traffic this rule would not apply.

I have with me the export tariff, Leland's I. C. C. 1597. (R. 294.)

The Texas state rates dealing with concentration on traffic moving to Texas points, was filed with the Interstate Commerce Commission in Item 200, as a result of the ruling of [fol. 101] the Interstate Commerce Commission that the rate into the concentration points must be on file with it, because the rates in this tariff are used into the concentration point in connection with shipments moving on Interstate or foreign commerce. (R. 296.) Prior to the promulgation of that rule, it was the practice of the carriers to permit concentration at Texas points and re-shipment to inter-state points, using Texas rates into the concentration points and protecting on reshipment the through interstate rate from the original point of origin to destination. At the head of page 20, we find: "Inter-state Rates on Cotton and Cotton Linters in bales and Cotton Pickings in Sacks, Rates on Shipment for Concentration." Therefore, item 200, intra-state rate, only applies in connection with the rates into the concentration point on inter-state movement. (R. 297.) It is generally understood by shippers in Texas that the rate named in this tariff will not apply on cotton for export, either on through bills of lading or on local bills of lading to the port. I do not think it would be difficult for the average shipper to understand this tariff. I think the caption to the item clearly indicates its purpose. (R. 298.)

Item #410 on page 29 of the Tariff, having to do with terminal charges, is cancelled by Item 410-A, appearing in supplement 5.

Railroad Commission of Texas circular #401 provides that the rates fixed by the Railroad Commission of Texas applicable to Galveston shall also be applied to all points on the Galveston Wharf Company tracks. (R. 299). If the Galveston Wharf Company should accept for local delivery traffic consigned to Galveston out on these wharf tracks, the railroad would have to comply with that and participate in the movement and apply the Galveston rate. It is only because the Galveston Wharf Company leases [fol. 102] its facilities on the Wharf front to the Steamship Agent that the application of different rates on export traffic and on local traffic to Galveston is permitted.

If the carriers make delivery to a connecting steamship line, that is construed as export or inter-state traffic. If the traffic comes into Galveston with the bill of lading marked "for export," in order to obtain more free time, that is inter-state or export traffic. If traffic comes into Galveston for a local Galveston consignee, the local demurrage regulations are applied and the intra-state rates of the Texas Commission are applied. (R. 300) Item #410, supplement #5, Texas Lines Tariff 17-D, Fonda's I. C. C. 135 is cancelled by item 410-A.

Cross-examination:

Item 200 of A. C. Fonda's I. C. C. 135 would permit the storage of cotton at pier 35 and pier 39 at Galveston under the 80¢ rate. I do not know how the railroads could police that shipment and see whether or not the shipper ultimately took out an export bill of lading. (R. 301). There has been no substantial change in conditions since the hearing in Docket 13,991, and the same difference between the services and the privileges on export shipments and on local shipments still exists, and the conditions at Houston are not substantially different from Galveston. I am familiar with the switching charges at Houston. If a consignment of cotton coming from a Texas common point, consigned to order, notify one of the compresses back of the water front, comes over the Southern Pacific, it would have to be switched over our line, and the Southern Pacific would have to pay us the switching charge. (R. 303). That charge is a mileage scale with a maximum of $3.15. If the shipment was consigned order, notify Houston Compress Co., Shipside, we would switch it and the charge would be $8.10—a difference of practically $5.00. That difference [fol. 103] would come out of the earnings of the Southern Pacific Railway Company on the 80¢ rate. All of the Railroads in Houston, have to pay out of their earnings, a switching charge of $8.10 to reach the Houston Compress Company's shipside, or any other industry located in the same channel territory. (R. 304). The difference results from their location at a greater distance. (R. 305).

Under the domestic bill of lading, or local bill of lading, the free time for demurrage is 48 hours, and under the ex-

port bill of lading the free time is five days. There is a difference in the switching charge at Galveston. There is no difference in the switching charge at Houston, but there is a difference in the service. (R. 306). Cotton for export requires more switching service than cotton for local delivery at Houston. If both were going through Anderson Clayton's plant, one for export and one for local delivery, the cotton for export is delivered on the wharf front, and has to be accumulated and held for arrival of the vessel. There are four delivery points on that one track. The cotton has to be classified and placed in berth order and switched to the wharf tracks, which requires a good deal more switching service than is involved on the local delivery cotton. We do not have to classify the cotton to be unloaded at Anderson, Clayton's plant. There are only two delivery points. (R. 307). We have a good deal that moves on a local bill of lading where the vessel is designated, and that cotton requires expedited service. We do not guarantee a certain sailing, but we are frequently called upon to perform expedited service in order to reach a certain vessel. If it were proven that at Galveston the average detention of export cotton is two days, 48 hours, then in actual practice, there would still be a difference. (R. 308). The I. & G. N. handles connecting lines cotton at Houston to the port facilities on the south side of the ship channel at Houston. That connecting line cotton is switched for $8.10 [fol. 104] per car. The I. & G. N. also handles connecting line cotton moving via the I. & G. N. to Galveston, and we get a division of the rates, which is very largely in excess of the switching rate. We have two rates applicable from McFaddin's plant at Houston shipside; one is a rate of 8¢ per 100 lbs. that applies on export cotton, and another is a specific switching rate of $8.10 per car which applies on all traffic. We can put any number of bales of cotton in the car to move at $8.10 per car. (R. 310). There is a similar charge at Galveston under like circumstances. On cotton moving to Houston on the common point rate of 80¢ from a point on the S. A. & A. P. Railroad or Trinity & Brazos Valley Railway, going to the McFadden plant, our switching charge would be a mileage switching charge running from $1.85 to $3.15 as a maximum. If it went to Anderson Clayton's plant or any compress on the water

front at Houston, southside, the switching charge would be $8.10 per car. The common point rate of 80¢ would still apply for the local delivery. If that same cotton were moving to a local delivery point in Galveston, received from the S. A. & A. P., the T. & B. V., or any other line at Houston, we would receive a division of the 80¢ rate for our haul south of Houston, about 11¢ per 100 lbs. (R. 311). After the cotton is hauled to Galveston, and is to be placed to local delivery points in Galveston, we have a switching charge to absorb, if it is delivered to a point on tracks other than the I. & G. N. That charge which we absorb is $3.15, and the local delivery rate is 80¢ to that point, the same as the local delivery rate to Houston. The additional 50 miles of service does not cost the shipper any more than the additional three or four miles of switching down at the front. (R. 312).

[fol. 105] Shipside cotton at Houston moves down to the tracks on the wharf. Local delivery cotton to the Houston Compress Company, is delivered on the tracks on the west side of the Compress back of the compress warehouse, and back of the water front. It does not have to be switched out in berth order, or held for any particular delivery. In times past there has been occasionally a very great congestion of cotton traffic at Galveston, entailing detention to cars in the fall of the year, and when that occurs it is of great value to the shipper to have additional free time. In making up the average under the export free time, we take the average of the total number of cars handled in any given month. (R. 313). The rate of demurrage is $1.00 per car per day. On local shipments the rates, after 48 hours, are $2.00 for the first four days, and $5.00 per car per day after that time. The average of all cotton at the port during the time when there is no congestion must be within two days, and still there would be cases of shippers who had a very great delay with correspondingly little demurrage cost. Under the demurrage rules, the maximum credit on any one car is eight days or twelve days; on local export bill of lading it is 12 days; on through bills of lading it is 18 days. If we deliver cotton to the Houston Compress shipside, we charge the 83½¢ rate. (R. 314). When I said 80¢, I meant to the plant there. We do not consider the general average detention. Our switching charge to the

fifth ward, Houston Compress, is $3.15, (R. 315) and the distance to the long reach plant is about two miles greater. We think that the switching charges fixed by the Railroad Commission of Texas reaching the maximum at two miles, does not fit the conditions at the present time, and that the $3.15 switching charge is too low. We should make the long reach switching charge proportionately greater to make up [fol. 106] up for it I am speaking for the I. & G. N. only. There is a good deal of difference of opinion among the railroads themselves as to what the switching charges ought to be at Houston, and various places. (R. 316).

WITNESS J. S. HERSHEY

I am General Freight Agent of the Gulf Colorado & Santa Fe at Galveston, and have been such for about 20 years. I adopt in substance Mr. Booth's testimony concerning the application of the Interstate Tariff, Fonda's I. C. C. #135. Regardless of whether I think it is proper to apply the 80¢ rate on cotton moving to Galveston, there immediately switched to a high density compress, compressed immediately and then drayed directly to shipside, the Railroad Commission of Texas Circular #401 requires that it be done. We must make delivery on the points of the Galveston Wharf Company in accordance with the order of the State Commission. The cotton is a local Galveston consignment, and we handle it as such. What is done beyond our delivery of it to the high density compress or to any other point where it may be delivered on the Galveston wharf, is something we do not know anything about. It may go back to a compress or warehouse on the Island. I do not know what becomes of it. There is no necessity of our policing it to see whether it is exported immediately or not, because we are following and must follow as our legal department tells us the order of the Railroad Commission. (R. 318). Up to a short time ago, no cotton was delivered in that way. It was not customary to deliver cotton on the Galveston Wharf Company's wharf front tracks, except to a connecting line Steamship. The situation with respect to cotton first came about when the high density compresses were established on the wharf

front, which it is stated was the result of the establishment of a similar plant at Texas City, to which the intra-state [fol. 107] rate was also applicable. For a great many years we have had difficulty frequently in connection with the determination on other kinds of traffic as to whether or not the traffic was intra-state, or inter-state, as a result of this requirement of the State Commission.

I have not advocated the one rate plan. (R. 319). The point I undertook to make was that such an arrangement would always give to one point an additional privilege over what other points might have, an additional concentrating or handling privilege, and I concluded that Houston would not be pleased with any other point having a privilege it did not have. Our line has actually collected very little money during the last year for the second concentration privilege. Handling the cotton business on a second concentration, and paying a charge has not proved profitable. (R. 320). If we waived that second concentration charge, we would not lose much in dollars, but I think we would add very materially to our expense.

Cross-examination:

Giving the concentration privilege, involves the expense of switching the car in to the compress, the handling of the cotton, and the furnishing of another car to take the load out. It is particularly expensive when it is not at the point where the cotton is compressed. (R. 321.) I do not think that there is very much additional expense at the first concentration, where the cotton is compressed as against the compression of the cotton without the concentration. The making up of the claim and the inspection that is necessary is perhaps a very slight additional expense. The cotton could be policed at the compresses at the port in order to apply the proper rate, provided there were enough policemen there to watch it. I am not familiar with the checking of records at the compress. The first time the second con- [fol. 108] centration privilege was ever established, it was established at Houston, and the purpose of it was to put the port of Houston on a parity with the natural privilege of concentration which was in effect at Galveston, and before Houston became a port. Houston will insist upon as many privileges of concentration as are had at Galveston,

including this natural privilege. (R. 323.) The Texas Railroad Commission reduced the rate on cotton from 54¢ to 51¢ per 100 lbs. from common point territory. The carriers thought that those reductions should not have been made. They were required to apply them so far as the Texas Railroad Commission's jurisdiction went. Seeking to increase the rate, they found that the drayage charge at Galveston at the time was 15¢ per bale. They found that they could increase their rate no higher than the combination of the intra-state rail rate, and the drayage rate at Galveston, which provided a shipside rate of 51¢ plus 3¢. That was the rate based upon which a natural second concentration privilege prevailed at Galveston, 3¢ higher than the local rate, and that was the figure that we could put into effect at Houston to make the charges at the two places the same. I do not subscribe to the waiving of the second concentration charge. The second (R. 234) concentration of cotton ought to be paid for. It is uneconomical to go beyond the compress point to concentrate cotton, and if a second concentration is necessary, the man that benefits from it ought to pay for it. I do not know whether Anderson Clayton & Company would be able to take possession of that class of cotton and deliver it to shipside without additional cost. I assume that they will have some additional cost, but I think that whatever our rule is at Galveston, must also be the rule at Houston. As long as this Railroad Commission of Texas Circular remains in effect, which requires the delivery under the intra-state rate at a point on [fol. 109] the Galveston Wharf Company's track, I cannot see how it is possible for them to make a rule that would not permit at Houston cotton or any other traffic to be handled on the municipal track, for instance, or Mr. Booth's track under the same conditions. (R. 325.)

I am making a statement for the Galveston lines and not for the Houston lines. The physical handling of freight is under the operating department of our road and not under the freight department. All cotton arriving in Galveston, when it is a carload of cotton destined to one delivery point, is always on the inbound movement delivered in cars. Cotton that arrives in the mixed cars, and is handled at the mixed platform, and is sorted out one bale to Mr. Moody, one bale to Mr. Kempner, etc., is the only cotton that is

handled by drays on the inbound movement. What I have to say will concern only the movement of cotton from the warehouses and compresses to the shipside compresses, or to the shipside, or to what further destination there is an obligation on the carrier to move it. The big cotton months are usually, August, September, October and November, sometimes December. (R. 326.) These are the months when we also have a large movement of export draying, which we have occasionally at Galveston. Our facilities at Galveston will take care of more than the average business, but will not take care of the peak business. During these months we need all the cars available to bring down cotton and wheat from the interior, Kansas and Oklahoma. In order to conserve our equipment, the cars, the wharf company's tracks and yards, and the facilities at the platform, for the unloading of cars at the wharf company's shed, the operating department has reached the conclusion that it is desirable to pay 18¢ per bale for the movement of cotton where there is a further obligation on our part to do so, [fol. 110] more desirable than to take a car out of our service that is needed in the interior and to use the engine, the tracks, etc., for that purpose. (R. 327.) I cannot testify whether it cost more or less, but they deem it good judgment to handle it that way. (R. 328.)

WITNESS J. O. HAMILTON

I am General Freight Agent for the Texarkana & Ft. Smith Railway. I have been in that position since May 1917. I am testifying with regard to Port Arthur. The situation at Port Arthur is different from that which exists at Houston or Galveston. Port Arthur is in the Southeastern portion of the state on the west side of Sabine Lake, about 16 miles inland from the Gulf. The Gulf is reached by a canal and then through Sabine pass, the wharf, docks, and other facilities at Port Arthur, as well as the land on which they are located, being owned by the Port Arthur Canal & Dock Company. They are served by the Texarkana & Ft. Wmith Railways. (R. 329.) Both of them in connection with the Kansas City Southern, from practically

one system. There are no cotton exporters or shippers at Port Arthur. They have no warehouse facilities there either on the water front or back of the water front. The facilities for handling cotton there is the cotton warehouse of our company, which is approximately 22 ft. long and varies in width from 90 to 106 feet. All of the cotton which goes through Port Arthur is handled on a through export bill of lading from the interior to a foreign country, or on a through domestic bill of lading if it is going to the New England or eastern spinning points via our coastwise service. There are no compresses, either standard or high density, at Port Arthur. We have a small electrically operated compress which is used for reconditioning cotton where the bands are broken or the buckles come off so that they may be reconditioned and put on the boat in proper [fol. 111] shape. The movement of cotton through Port Arthur has diminished considerably in the last few years as a result of the larger concentration at the Gulf Ports which is increasing from time to time. It will be necessary for us, in order to share any substantial way in the handling of cotton, to have some brought through (R. 330) Port Arthur locally for warehousing, either on our facilities on the water front, or in facilities which may be later furnished by shippers or exporters, either on the water front or away from the water front. Efforts to get exporters and shippers interested in Port Arthur in this respect have been made, and are being made, and any order which the State or the Interstate Commerce Commission may issue with regard to privileges. allowances etc., in the handling of cotton at the other Texas ports, should include Port Arthur. Up to the present time, Beaumont has not been a cotton port. We have never handled any through Beaumont—either export or coastwise. There are export sailings from Beaumont but no coastwise sailings. I think that statement with regard to our lines is also true with regard to the other roads which serve Beaumont. (R. 331.)

Witness F. E. Potts

I am Traffic Manager of the Port Arthur Chamber of Commerce, which position I have occupied since July 1st,

1921. My organization has been working with the Kansas City Southern in trying to regain a part of the cotton business that formerly existed at Port Arthur, and joins with them, and for its own account, in the request that whatever action is taken respecting the other ports in this case, be made effective at Port Arthur, so that the same condition may exist there as exists at the other ports.

[fol. 112] WITNESS E. H. THORNTON

I am Traffic Manager of the Galveston Exchange and Board of Trade, and of the Galveston Commercial Association. I have been connected with these organizations since March 1, 1919.

(Mr. Fulbright:) (We admit the qualifications of Mr. Thornton as a Traffic Witness.)

My Exhibit A-6 is a map showing the location of the various warehouses, cotton warehouses, and compresses at Galveston, which have compresses, either standard or high density. Where there is no cross marks with the warehouse, that will indicate that there is no compress in operation there.

My Exhibit A-7 is a comparative statement showing a list of the cotton warehouses and compresses at Galveston, Texas, the cost of draying cotton from warehouses at Galveston to shipside, as well as the cost of switching cotton from warehouses at Galveston to shipside as reflected in the published tariff of the carriers. The switching charges shown are the intrastate switching charges. The carriers at Galveston do not publish an inter-state switching charge. This exhibit shows that the cost to the shipper would be (R. 333.) substantially the same whether he drayed his cotton from the warehouses to shipside or whether he switched it from warehouses to shipside. These switching charges may or may not represent the actual cost of the service performed by the carriers.

My Exhibit A-8 is a reproduction of note C of Texas Lines Circular #1-C Item 285-A. This Circular is not filed with the Interstate Commerce Commission, but it contains the charges assessed for switch movement, and this

exhibit explains switching charges as shown on my Exhibit-A-7. It gives the authority for the switching charges as shown on that Exhibit. Except for account of the Gal- [fol. 113] veston Wharf Company, they make a charge of $8.00 per car where they perform the service entirely over their rails. (R. 334.) This shows the cost to the shipper if he elected to separate the two moves into the plant and out of the plant to shipside Galveston. If he were entitled to a transit privilege in Galveston, there would be no such charge collected. (R. 335.)

My Exhibit A-9 is a comparative statement showing the production of cotton in bales in Texas and Oklahoma for the seasons 1914, 1915, to and including the seasons of 1922 and 1923. It shows the number of bales of cotton received in Galveston, Houston, and Texas City, Texas separately, the number of bales exported direct from these three ports separately, and the number of bales shipped coastwise from these three ports separately during the same period; also the total number of bales shipped export and coastwise from the same ports. It shows that principally Galveston, Houston and Texas City are active competitors for this cotton traffic both export and coastwise movement, and that any advantages that may be extended to any concentrator at Houston would react against the concentrators at Galveston and other ports. Effective August 1st, 1910, the Railroad Commission of Texas reduced its cotton rates from Texas common points to Galveston from 55¢ to 51¢, and during the period August 1st, 1910 to November 16th, 1910 the shipside rates from Texas common points to Galveston remained at 55¢ while the domestic rate was 51¢, making a difference between the domestic rate and shipside rate of 4¢ per 100 lbs during that period. Effective November 16th, 1910 in E. Wiatt's I. C. C. #9, the export or shipside rates on Cotton from Texas common points to Galveston were reduced to 51¢. This rate also applied on cotton for depot delivery or local warehouse delivery back of the [fol. 114] water front. That condition remained in effect until September 1917, when in supplement #6 to F. A. Leland's I. C. C. #1185, the Texas carriers established a uniform difference of 3¢ per 100 lbs. in making their rate on cotton shipside Galveston over the domestic delivery rate applying to that port, and I think that the same difference

was added at the other Gulf Ports. This difference of 3¢ represented at that time the approximate average cost of draying cotton from local compresses and warehouses at Galveston to shipside. Therefore, I am safe in stating that, the 3¢ was added as an equalizer between the port concentrator and the interior concentrator. It did not purport to represent any (R. 337) additional cost of service performed by the carriers in making delivery to shipside over and above what it cost them to make delivery to the local compresses and warehouses back from the water front at Galveston. So far as we can determine, there is no additional cost to the railroad in making deliveries to shipside Galveston, as compared to making deliveries to the compresses and warehouses at Galveston. This method of equalizing rates was first approved by the Interstate Commerce Commission in the Louisiana Cotton Case, I. & S. Docket 955, 46 I. C. C. 462. In that case the Commission stated further that if any greater arbitrary should be added to the rate than was represented by the amount it cost the port concentrator to dray or transport his cotton from the Warehouse at the port to shipside, this would result in discrimination against the interior concentrator and give undue preference to the port concentrator because the latter would be able to get his cotton concentrated (R. 338) for delivery at shipside at a lesser cost than the interior concentrator. The Commission further held that it would be an unjust discrimination against the port concentrator [fol. 115] should the carriers add an arbitrary figure to the domestic rate which represents a lesser cost than the port concentrator is required to pay to dray or transport his cotton from the warehouses at the port to shipside, because this would enable the interior concentrator to deliver his cotton at shipside at a lesser cost or rate than the port concentrator or shipper. This priciple was reaffirmed in a recent decision in 77 I. C. C. 388. Until recently there had been no complaint from either the interior concentrators or shippers, or the port concentrators or shippers about being charged a higher rate for shipside delivery than they the carriers applied on cotton for local depot or domestic delivery. The actual transportation service performed, in our opinion, was the same in either case. (R. 339.) The [fol. 116] interior shippers realize that it would cost the

port concentrator 3½¢ per 100 lbs. or approximately 18¢ per bale additional to get his cotton delivered to shipside. The interior concentrator therefore felt that there was no unjust discrimination. The arrangement was satisfactory until recently, when certain large cotton firms, one in particular at Houston, decided to construct a warehouse immediately at shipside Houston, for the purpose, no doubt, of obtaining an advantage over everyone else. (R. 340.) As soon as learned of that plan, we called a conference with the officials of Galveston Railroads, and pointed out to the carriers that the man located at shipside Houston, would be able to obtain delivery of his cotton to ship tackle at a cost which would approximate 18¢ per bale less than it would cost the concentrators back of the water front at Galveston, as well as the interior concentrator and shipper. It was our position then, and in the Weatherford Crump Case, that there should be a higher rate on cotton delivered to shipside warehouses than is assessed upon cotton delivered to a warehouse back from the water front, and that there should be no discriminations between deliveries to shipside warehouses (R. 342) or piers, whether they are located at Houston, Galveston, or any other port. The carriers assess a higher shipside rate on cotton delivered to the warehouse at pier 35 at Galveston, 83½¢ per 100 lbs. than on cotton delivered to Anderson Clayton's shipside plant at Houston, for which they would assess a rate of 80¢ per 100 lbs. The services performed are identical in my opinion. If the carriers would assess the higher shipside rates on every bale of cotton delivered to a shipside warehouse, at which a vessel can or does take on, or discharge cargo, and at which the steamship agents sign for cotton, according to the principle laid down by the Interstate Commerce [fol. 117] Commission in the two cases referred to, that would remove the unjust discrimination and place all concentrators and exporters of cotton on an equality, regardless of their location, whether at the port or on the water front, or back of the water front, or at interior points. We request that the commission give first consideration towards working out a plan under a two-rate (R. 343) theory, whereby all concentrators and exporters will be equalized. A shipside warehouse should be designated as a warehouse at which an ocean vessel does call and take on

or discharge cargo, and at which steamship agents sign for and take possession of cargo. The undue preference and discrimination can be removed by the application of one rate on cotton to the ports, whether for export or coastwise movement beyond, or for local or depot delivery. There is a movement of cotton to and through the ports that is, in our opinion, strictly intra-state, and that movement is of considerable volume, particularly cotton that has actually changed ownership at the port. The factors at Galveston, for instance, advance money, sometimes 60% on cotton bought in the interior, store in their warehouses for a certain length of time and then sell it to an exporter. (R. 344). That is clearly intra-state traffic. I believe that there are thousands of bales of other cotton that actually changes ownership at the posts. (R. 345.) Where there is a change of ownership at the port, which is an actual bona fide change, I think the cotton should be entitled to the intra-state rate regardless of its subsequent position. For several years prior to November 1917, the same rate was applied on cotton to the port of Galveston, whether for export, coastwise, or locally, provided for a refund which was approximately the average cost of draying cotton from the warehouses and compresses at Galveston to shipside at that time. While we prefer the two rate plan as I have outlined, as an alternative, Galveston will [fol. 118] accept the one rate plan on condition that the carriers make provision in their concentration tariff that where cotton has to be drayed, switched, or barged from the warehouses, or compresses at the port to shipside, the actual cost of performing this service will be refunded to the shipper, not to exceed 20¢ per bale. This allowance should be made on all cotton that is concentrated or stored in the warehouses located back from the water front at the port, and no extra penalty should be assessed because the same may have been concentrated in the interior before being shipped to the port. Such a provision will equalize the port concentrator, whether located at shipside or back from the water front, as well as the interior concentrator. Galveston will agree to the one rate plan on that condition, but only as an alternative (R. 348). It is our position that the railroads are violating their tariff provisions when they apply the local rates to the shipside warehouse of the Hous-

ton Compress Company, or the Anderson Clayton Company. The fact that this cotton is shipped to a shipside warehouse is, in my opinion, indicative of the movement by water beyond. The purpose of a shipside facility is to move the traffic out by water. (R. 349.) Delivery to the shipside warehouse gives the railroad sufficient notice that this traffic should be termed shipside traffic and should take the shipside rate; it is the same as cotton delivered to a shipside pier at Galveston on which the railroads without question assess the shipside rate. In addition to the plant of Anderson Clayton & Company, there is under construction at Houston another shipside plant, that of Alexander, Sprunt & Company. I understand that actual construction is now under way with the docks immediately adjacent to the warehouse, and it is the plan of this company to demand the same privileges and rates as have been ex- [fol. 119] tended to Anderson Clayton & Company. It will be only a question of time until every large cotton shipper that could afford it would have to seek such a shipside location in order to meet the competition of Anderson Clayton & Co., who are the largest cotton shippers in the world today. (R. 350.) I have a letter from the President of the Houston Compress Company, Mr. Fulbright, stating that that company was organized as a compress, warehouse and wharf company, and that they did a general wharf and dock business. In Texas Lines Tariff 21-E, A. C. Fonda's I. C. C. 134, which is the local terminal absorption tariff of the railroads serving Galveston and Texas City, Beaumont and Orange, Texas, in Item 780, under Column 2, note 2, this clause appears: "No absorption will be made at Houston except when the services performed by the rail carriers, or their authorized agents, or concentrators, or by any firm, person, or corporation, with whom the carriers may have executed formal written contract secured by a surety bond for the performance of such service—" and in this item 780 the railroads say that they will absorb the terminal charges of the Houston Compress Company at Houston, as well as the terminal charges of the municipal wharves and docks at Houston, in addition to the terminal charges at other ports, all of which bear out, in my opinion, my statement that the Houston Compress Company is in fact a water site facility, as much so as the piers of the Galves-

ton Wharf Company at Galveston. With that evidence before the railroads, they, in my opinion, should assess the shipside rates on the cotton that goes into that shipside facility. (R. 351.) In the final analysis, the man at shipside has an advantage over everybody else of at least 18¢ per bale. To illustrate, cotton consigned to Anderson Clayton & Company's shipside plant at Houston, pays an 80¢ rate from Texas common points. They have it compressed to high density, and we will assume that costs them about 50¢ per bale. By doing so, they save [fol. 120] 75¢ per bale in the ocean rate. It does not, in our opinion, cost Anderson Clayton & Company any additional amount to put that cotton to shipside. On cotton moving from the same point in Texas common point territory to Mr. Kempner's warehouse at Galveston, Mr. Kempner pays 80¢ per 100 lbs., has it compressed to high density, which will cost him about 50¢ per bale, and by which he saves 75¢ per bale in the ocean rate. But Mr. Kempner, in order to get that cotton to shipside, must pay 18¢ or 20¢ per bale additional. The same would apply to cotton which Mr. Kempner might handle for other concerns. (R. 352.) The saving of 75¢ per bale in the ocean rate has nothing to do with the case, since the man at shipside realizes the same saving. So long as it does not cost the man at shipside any additional amount to put his cotton to within ship tackle, he has a clear advantage over every other cotton exporter and shipper of 18¢ per bale at least. I know that the steamship agents in Galveston are anxious and willing tomorrow to wipe out this difference between the high density and the standard ocean rates on cotton. They were attempting to do that a year ago, but Anderson Clayton & Company, as well as other large cotton shippers in Houston and Galveston who own high density compresses, brought such pressure to bear on the steamship agents that they withheld the elimination of that differential temporarily. They have shown me, personally, actual figures which show (R. 353) that they could make more money by handling standard compressed cotton than by handling high density cotton. The difference is liable to be wiped out today. It is only by reason of their fear of these large shippers that they have not done it already. They are waiting for their chance to wipe it out. If it had not been

for the large shippers, the differential would have been shrunk to such an extent that it would not be of any advantage. It is our contention that there is not much, if any, difference between the cost of handling the cotton from [fol. 121] an interior shipper through the cotton warehouses at Galveston to shipside Galveston as compared with (R. 354) the cost of handling cotton from the same interior country shipping points through the interior warehouses, for instance, located at Waco, and sent to shipside, either Galveston or Houston, and when I say shipside Houston, I include the Houston Compress Company's shipside facility. Therefore, it is our desire that the concentrator at the port back from the water front, should not be forced to pay any more to get his cotton delivered to shipside Galveston, than it would cost a shipper to handle cotton through a warehouse at Waco and sent to shipside Galveston and vice versa. We think it ought to be equalized both ways. I don't think the man at Galveston ought to have an advantage over the man shipping through facilities at Waco. (R. 355.) In the Weatherford Crump case, the carriers base their case almost entirely upon the through bill of lading. My investigation, including letters to steamship agents, as far as it has gone, shows that about ten or twelve per cent of the cotton that is being handled today is on through export bill of lading. It is our contention that on cotton moving to the ports on local export bills of lading, there is not any additional service to speak of performed by the carriers over and above the service performed on local domestic delivery cotton. (R. 357.) In regard to the additional free time that is allowed on local export bills of lading cotton, I call attention to the fact that New Orleans, La., today allows four days free time on domestic depot delivery cotton. The authority for that is item 19 of W. P. Emerson's I. C. C. 77, showing that four days free time is allowed at New Orleans on domestic compressed cotton and seven days free time allowed on export cotton. We request that if the carriers continue to apply lower domestic rates on cotton delivered to shipside [fol. 122] warehouse of Anderson Clayton & Company, or any other shipside facility at Houston, the carriers should not be permitted to charge any different or higher rate on cotton delivered to the shipside warehouse of the Galveston

Wharf Company at Galveston, whether that cotton is concentrated at the warehouse at Galveston, or delivered to shipside Galveston, or concentrated in the interior and shipped direct to the shipside warehouse at Galveston. There should be no difference between the delivery of cotton to pier 35 at Galveston from the delivery of cotton to the shipside facility of Anderson Clayton & Company at Houston, or any other warehouse that may be constructed at Houston. (R. 358.) I am using pier 35 as an example; that applies to any of the shipside piers. It is my contention that the carriers are not living up to their tariff when they do not assess the high shipside rate on this traffic, and that it is creating an unjust discrimination against other shippers and giving undue preference to those having a shipside location. The first second concentration privilege was established at Houston before Houston was a port, for the purpose of placing Houston concentrators and shippers on an exact parity with the Galveston concentrators and shippers in regard to cotton. (R. 359.) The charge assessed for this second concentration at Houston was fixed at a figure that exactly represented the average cost of draying cotton from the warehouse in Galveston to shipside Galveston, and did not purport to represent any cost for additional service performed. That has been the policy for many years, and we think that it is good for the cotton trade as a whole and for the cotton farmers and producers in particular to create and encourage this competition rather than to restrict it. In case it is decided that the only way to remove the unjust discrimination is to establish one rate to the ports, speaking for Galveston, we desire to have [fol. 123] the railroads provide in their tariff that on cotton which is handled from local warehouses at the ports to shipside, when for export or coastwise (R. 360) movement beyond, that the railroads will absorb the cost of making that delivery, not to exceed 20¢ per bale, that arrangement to apply also at Houston for the benefit of the warehouses back from the water front at Houston when that cotton is delivered to the vessel at Houston. In my opinion, that will not be an injustice against the interior shipper, and it will exactly equalize the concentrator back from the water front, with the concentrator or exporter on

the water front. If you penalize the so-called second concentrated cotton at Galveston, or that handled by the warehouses back from the water front at Houston, you give an advantage to the concentrator and exporter at shipside of 18¢ per bale on that cotton, which will be very serious in connection with some shippers, for instance, the shipper who testified that 70% of his cotton was bought from interior concentrators and shippers. The privilege that we request would really encourage the building up of interior markets which is the real back bone of the cotton business. The interior markets have been built from this practice of equality that has been in effect for many years, and they should not be deprived of that privilege in the future. (R. 361.)

Cross-examination:

I would not say that the practice of the compresses in absorbing the drayage to the water front has been a disturbing factor. The real disturbance has been brought about by the establishment of shipside warehouses at Houston by large cotton firms and exporters. It has every cotton shipper in Texas worried today as to what the ultimate outcome is going to be. (R. 364). The compresses are really compressing cotton for 54½¢, and if the shipper elected to do so, he could dray it to shipside for 18¢ himself. The shipper is paying 18¢ per bale in that combined charge [fol. 124] that the compress quotes him. He is still paying 80¢, the domestic rate plus 18¢ per bale to get it to shipside. (R. 365). The competition between the compresses is not a factor; it has reduced the cost of compression to the shipper to 54½¢ per bale at the port, but the shipper still pays 18¢ per bale for drayage. I did not testify that I thought the one rate plan was proper; my preference is for the two-rate plan; my statement was intended to explain my position in case the two Commissions decided that the one rate plan was the only plan that could remove the discrimination. If the Shipside High Density Compresses are considered by this Commission as a shipside facility, I would say that a shipment of cotton coming from Dallas consigned to Galveston, immediately upon arrival ordered switched over to the shipside density compress, should bear the export rate, and when the Shipside High Density Com-

press drayed this cotton to another point along the water front, the railroads should refund to them the actual cost, not to exceed 18¢ per bale; but when the shipside compresses truck this cotton from their compress immediately to the ship, which may be berthed adjacent to this compress, then the shipside compress should not have any refund.

I do not know that the disadvantage is greater in the case of E. H. Perry & Company because it does not own a compress. I know that some of the warehouses in Galveston, like the Southern Products Company, have adopted the policy of going after that cotton, taking it to their warehouse, compressing it, and delivering it to shipside with no additional cost to the man who does not own or operate a compress. (R. 369.) McFadden Bros. absorb the cost of draying from Tarner Steele's warehouse out of the compression charge of 54½¢ per bale. I would not object to having the Houston Compress at Houston, and the shipside compress at Galveston covered by the same regulation. The Shipside Compress, since it has to dray farther to the [fol. 125] ship than the Houston Compress, should be refunded the actual cost of drayage, not to exceed 18¢ per bale. (R. 370). The date of the Railroad Commission of Texas Circular #401 was March 16th, 1897. I am sure that the prime purpose of that circular was to cause the Galveston Lines to absorb the Galveston Wharf Company's switching charge. At that time there was no difference between the domestic and the export rates. This circular does not designate cotton only, it says "all traffic." (R. 371.) Circular 401 is still in effect. I would not say whether or not it would have been a violation of circular 401 to have required the collection of a rate in excess of 80¢ per 100 lbs. at the shipside density compresses on the Galveston Wharf company's track on shipment billed local to Galveston. I am not a Lawyer. (R. 372). I stated that if the 80¢ rate was the proper rate for application locally to delivery points on the Galveston Wharf Company's tracks at Galveston, cotton must be consigned for storage to the sheds of the Galveston Wharf Company, and handled on an 80¢ rate. It has been the custom of the Galveston Wharf Company not to permit the storage of freight in their sheds, but they are willing to change that custom today. (R. 373). I know something about the cotton business in Galveston for

the last five years. I know from experience and from what I have heard here that the proportion of cotton that moves on through export bills of lading is very small. That cotton moves to shipside at the 83½¢ rate. (R. 374.) I am not a shipper and could not say what would influence a shipper one way or the other. I know in a general way that a shipper working on a small capital, would prefer the through bill of lading if he could get his money quickly by using it. I said that under item 200 of Texas Lines Tariff 17, I. C. C. 135, cotton could be concentrated at the compresses and [fol. 126] warehouses back of the wharf front at Galveston, and subsequently shipped to the warehouses on the water [fol. 127] front under a concentration privilege and thus get the benefit of an 80¢ rate. I did not say to the High Density Compress. (R. 375). I refer to the shipside warehouses at piers 10, 13, 14, 35. Such cotton would be subject to the concentration charge of 6½¢ if the shipper elected to connect it up with the inbound movement, but the railroads cannot police and see that it is connected up with the inbound movement and the higher rate applied. He could send it to the shipside warehouses and say that it was for storage. He may or may not have already booked that cotton on a steamship. (R. 376). My contention is that he can ship it to the warehouse back of the water front and then re-ship it to the shipside compress on the 80¢ rate, under the concentration rules. If it is not free cotton, it would then be subject to a second concentration charge. I was talking about free cotton. The amount that has been concentrated before in the interior varies as to various shippers. (R. 377). A large part of Mr. Reed's cotton moves to Galveston, compressed in transit, without having a concentration privilege before it reached Galveston. If the same cotton had had a concentration at an intermediate point north of Galveston somewhere it could move on to almost any destination in Galveston if it wanted to without any penalty; it could go to the shipside warehouse. (R. 378). If the railroads make a delivery of cotton first concentrated at Galveston to a pier at Galveston, on a bill of lading that does not have a note thereon that it is for export or coastwise movement, you have an inter-state application. The demurrage rules would be different on export traffic. (R. 379). The switching charge is insignificant, and the

difference at Galveston is due to the fight between railroads and wharf companies. There is no difference at Houston and no difference at New Orleans.

[fol. 128] I think the equalization is good for the cotton trade as a whole. The more competition the better the price anybody gets for a commodity. (R. 380). I am not advocating an increase in rates. I am advocating an equalization of buyers and exporters and the cost would be the same under the plan I suggest as it is today. (R. 381). I do not think that equalization of ports is involved in this case. If it is I have other evidence in Galveston I want to bring in.

The cotton concentration company has a warehouse on the premises of the Galveston Wharf Company back from the pier (R. 382), about 200 feet. On the map in my exhibit, the shaded area next to the water front is the pier. The shaded area marked "Old Moody Compress" is a cotton warehouse operated by the cotton concentration company. There are two high density compresses there. I do not know anything about how the cotton concentration company does business. A steamship agent will not accept cotton and sign for it in the warehouse of this old Moody compress. (R. 386). If cotton can be hand trucked from this warehouse of the cotton concentration company, I would consider it a shipside facility, and I think the cotton concentration company should pay the shipside rate on cotton that is being merchandised there, the same as Anderson Clayton Company. (R. 387). The Shipside Density Compress Company should pay the shipside rate and get a refund for the actual cost of draying cotton to the ship. On the two rate theory, I would apply the shipside rate on all cotton delivered to a warehouse at which a vessel will call for that cotton, and at which a vessel does commonly dock and take on or discharge cargo. (R. 388.) The cotton concentration company concentrates cotton at the old Moody plant. If a merchant has a space assigned to him in a shipside warehouse, he should be charged a higher rate than the man who is doing the same business in a warehouse somewhere else, because in the final analysis the man back from the water front has to pay that difference to get [fol. 129] to the shipside. You might say that it gets down to the question of location, of whether or not you have to

pay more costs to get to the shipside. I would not say that it is a question of geographical location. It is a question of bringing about an equality between exporters and shippers. The Louisiana cotton case and Docket 11,965, and the Weatherford Crump case, none of these cases raised any question as between back of the water front compresses and the water front compresses. (R. 390). The question was not raised until Anderson & Clayton built their shipside facility at Houston, and they are about to disrupt the whole plan of equality that has been in effect for many years and was satisfactory to everybody. In the brief I filed in the Weatherford Crump case, in which I stated that the difference in the demurrage charges rules and regulations on export as against local delivered cotton in Galveston, was sufficient to warrant a difference of at least 3½¢ per 100 lbs. in the export over the local delivery rates, not to mention the other additional expense incurred in the handling of direct export shipments, I was referring altogether to through export bills of lading. I affirm that statement now. I don't think that the man shipping on the through export bill of lading should be required to pay a higher charge to get his cotton delivered to Liverpool than anybody else. I think that those additional costs should be disregarded in order to place him on an equality. It is a question of discrimination almost entirely. I think there have been shipside density compresses on the water front at Galveston about three years. (R. 394). I do not know when the Turning Basin Compress began operation at the Municipal Wharf in Houston. Both were in operation at the time of the hearing at the Weatherford Crump case. In Docket 15,803, Galveston Commercial Association vs. [fol. 130] various carriers, I advocated the same rate to shipside Galveston as Houston has to shipside. In Docket 11,965, which was heard in 1921, we advocated the two rate [fol. 131] plan, providing for rates to shipside which were higher than the rates for local delivery. (R. 396). We have always advocated that plan, up to this time, and I think the decisions in Docket 11,965, and in I & S Docket 955 approved that plan. It was an ideal plan up until recently. (R. 397). In reference to the compresses paying for the drayage from warehouses which do not have compress facilities to the compress, they absorb that charge out of

the 54½¢ per bale which they get for compressing. I know that McFaddin does it and I assume that the others meet the competition. The compresses of necessity have to fix their charges to meet the difference in the ocean rate. (R. 399). I took the position in my former brief that, so far as Galveston was concerned, there was no discrimination between the local concentrator who uses the facilities of the shipside density compress company at Galveston, and the interior concentrator who consigns his cotton through to Galveston for export, because of the fact that the shipper actually pays 18¢ per bale more to get his cotton to shipside from the high density compresses, and that brought about an equalization. My information is that the Texas Farm Bureau uses the old plant or the back of the water front plant of the Houston Compress Company in Houston. I do not know whether or not any Farm Bureau cotton moves to the Long Reach Plant of the Houston Compress Company. (R. 401). I have not investigated the handling of cotton on the wharf of the Houston Compress Company direct for export since June, about a week before the plant was opened up in July. My information is that the steamship agents are signing for cotton and accepting the cotton in the warehouse of the Houston Compress Company, and at their expense are putting their cotton aboard vessels. Our complaint was started in this case shortly after we received press notices and information that the Houston Compress Company was contemplating building this large facility, and after we received information that the Houston Compress Company had spread all over Texas, asking [fol. 132] shippers to come to shipside and use their facilities and make a saving of so much per bale. They solicited a lot of firms doing business in Galveston. (R. 402). My organization, the Cotton Exchange, then sent every cotton shipper in Texas a copy of our petition to the Interstate Commerce Commission, calling attention to this situation and alleging discrimination. I think that the President of our organization also sent out a circular letter to cotton shippers calling for their assistance. We wanted to know the facts; Houston told it one way and we wanted to know the other side. The Houston Compress Company are sending out circular letters soliciting business every week, practically. (R. 403). I have seen a circular letter issued by

the Houston Compress Company, advertising the advantage in rates that they enjoy over Galveston. What I objected to in the letter written in 1921 was the application of the shipside rates on cotton delivered to the cotton concentration warehouse #41. (R. 404). My position was that at those warehouses that were set aside for use by the cotton concentration company, the steamship agent would not sign for the cotton, and transport it to the ships at their expense, and therefore, they should not be designated as a shipside warehouse. But as I see it now, that is hard to get away from. I don't think you could make a different rule for those warehouses, if the ships can dock there and take cargo, and my point was that the steamship agents should not accept cargoes of cotton in the warehouse and transport it at its expense to the ship. If the cotton concentration company induced the ships to sign for cotton stored in the old Moody Press, I would think that it was a shipside warehouse. It would all depend upon what arrangement could be made with the ship agent, because that relieves the ship of the expense of placing that cotton aboard ship and that is the issue in this case. (R. 405). If that cotton was to [fol. 133] be shipped all rail, he gets his money back by concentration.

In all cases where 83½¢ is mentioned as a shipside rate, there is an added expense for wharfage, which is placed against the cotton in order to put it in reach of the ship tackle. That is true at all Texas ports. (R. 406). On coastwise cotton moving via the Morgan & Mallory Line, the Steamship lines absorb the wharfage. The wharfage at Houston is 1½¢ per 100 lbs., at Galveston 2¢, and New Orleans 3/4¢ per 100 lbs. They call it a tollage at New Orleans, but it is the same. It is a charge for passing over the docks. Cotton delivered on a local rate of 80¢ must actual-bear the expense of movement from compress or warehouse to shipside, plus the wharfage charge, and I think that that expense should represent the difference between the ship-side rate and the local delivery rate, assuming that it is 3½¢. (R. 407). I think the line of demarcation as between the up-town compresses entitled to the local rate and the shipside compresses or warehouse which should be sub-jected to the shipside rate, is the ability of the compress to effect delivery to the ship in its own warehouse. (R. 409).

If the Steamship Company signs for the cotton in the warehouse of the Turning Basin Compress Company, I would say that it is a shipside compress. Wherever the steamship companies accept cotton, you have a water front compress.

WITNESS HORACE BOOTH

I wish to correct my testimony of yesterday with reference to the switching charge of $3.15 from the connecting lines to the Fifth Ward Plant of the Houston Compress Company, and with reference to the $8.10 charge to the shipside compress. (R. 411). I want the record to show clearly that we do not regard either the $3.15 charge, or the $8.10 charge as being compensatory for the services rendered.

[fol. 134] WITNESS J. S. HERSHEY

When I stated that the second concentration privilege was not used to any considerable extent, I meant as far as the collection of the 6½¢ charge was concerned. I am informed that it is in fact used to a considerable (R. 412) extent and the traffic is drayed perhaps in Galveston rather than moved under the railroad's second concentration privilege. Perhaps that is also true at Houston. The interior concentrator will claim and endeavor to get just as many privileges as are permitted. Since the concentration does occur at Galveston, even though we don't get the money for it, we will perform a service for it. I think we have more privileges on cotton generally than we ought to have. Each one is an expensive privilege and costs money. If another concentration privilege was allowed at Galveston, it would be natural and proper for the Houston interests to claim another concentration privilege. (R. 413). I do not want to leave the impression that an improper situation exists. I am informed that there is a considerable quantity of cotton that moves under the transit arrangement, due to the fact that the identity of the cotton is lost at the transit point, that there is a large quantity of it that moves and is concentrated a second time. I was informed

recently by a very large cotton operator that more than 40% of the cotton that he handled was handled *was handled* with the second concentration privilege. I don't mean under the tariff, but that is actually what was done with it. If that second concentration privilege, or third concentration privilege is in effect at a port, there will be a demand for a similar privilege at interior points. (R. 414). There was the natural concentration privilege on cotton moving to Galveston, nothing that the railroad extends; to equalize [fol. 135] that there was permitted for many years, a second concentration privilege at Houston. Since Houston has become a water facility, they have a natural concentration just as at Galveston, but we have other points in Texas that are ambitious as cotton markets just as Houston and Galveston are. Probably the most important reason that the carriers don't get the revenue from the second concentration privilege, is the fact that the shippers and compressers back of the water front can get to shipside at a lesser cost, either by drayage or switching service, than by paying the second concentration charge. (R. 415). I do not mean to imply that the concentration is being taken and the tariff not applied, or that there is anything illegal or improper about it. The customary practice at Galveston is for the Galveston Wharf Company to assign to various steamships certain wharves. The tariffs of the Wharf Company provide that they will not engage in the storage or warehousing of freight, so that traffic delivered to the wharf company at their shed is traffic that is delivered at the depot of the steamship line in fact. We are considering any freight that we deliver to the sheds or wharves, is a delivery to a connecting line transportation carrier, and not to a local consignee. They do no warehousing in those sheds. (R. 417). All of the storage or warehousing of freight on the Galveston Wharf Company's property, as I understand it, is done under the supervision of the cotton concentration company. Mr. Guion, Traffic Manager of the Texas City Terminal Company, requested me to state for him that in your consideration of this matter, Texas City is also a port and on the same waters as Houston and Galveston, and in your consideration of the matter, Texas City be not lost sight of. (R. 418). If a second concentration should be given free, there would likely be a great deal

more than if an additional charge was made for it. There might be a great deal of additional service imposed upon [fol. 136] the carriers, and the one rate plan would provide an additional privilege. There might be a second, third, or fourth privilege at Galveston without a charge, whereas our tariffs provide for a six and one-half cent charge for the second one now. There is a large amount of cotton that moves into Houston and is concentrated in Houston, that is subsequently sent to Galveston to be sent out by ship for coastwise points, and if there were a second concentration in Houston, there would be a charge there of 6½¢. The traffic might then move on to Galveston and get a third concentration at no charge whatever. Under the two rate plan today, the man at the port under the Texas Commission's rate, and taking a local delivery can do what he wants to with the cotton, and that completes the transaction. Originally that was exactly what the second concentration at Houston was put in for, namely, to equalize with that situation. The coastwise lines have not been handling any considerable cotton to Eastern or New England Mills, but I understand the Southern Steamship Company is anxious to engage in the outbound business from Houston, and is anxious to have our tariffs amended so that they can enjoy the outbound business. The Morgan and Mallory Lines handle a large amount of business out of Galveston. I think that the 6½¢ for second concentration applies only to the second concentration and not to subsequent concentration. (R. 420). It would be difficult locating the cotton getting the subsequent concentration.

WITNESS K. E. WOMACK

I am President of the Houston Cotton Exchange and Board of Trade. I am a member of the firm of Sanders & Company, Cotton Exporters, whose principal place of business is at Houston. (R. 481). The Houston Cotton Exchange and Board of Trade is made up of cotton merchants [fol. 137] of all characters, including some bankers and other individuals outside of the cotton business. It also includes some cotton factors. It represents practically the cotton interest of Houston. We have members whose principal interests are at other points. In this proceeding I

appear particularly for the Houston interests, as represented by the cotton exchange.

My Exhibit A-10, prepared at my direction, gives a list of the compresses at Houston, the approximate value of those compresses, and the storage capacity and the switching charges, and the cost for moving in from these compresses to the water front. (R. 422). I am not a rate man, and have no personal knowledge of the tariff's provisions with respect to the rate. The switching charge per bale is the barge line charge. The Houston Compress Company and the Turning Basin Compress Company are so located that they may transport cotton from their warehouses to ships by truck. (R. 423). The Ship Channel Compress Company, I understand, is making improvements which will enable them to load on ship. The Magnolia Compress is located on the channel but has no provision to load on ship and is not making any. The Clinton Press of the Shippers' Compress Company is also on the channel, but has no facilities for loading. There are still other presses that may be served by barges, and in each case where there is shown in the exhibit a 14¢ per bale charge, it is possible to barge cotton from those compresses to the ships. (R. 424). The Ship Channel Compress Company, now erecting a facility known as the "Sprunt Compress," has been there about eight years I think. Our organization would like to see maintained the difference of 3½¢ between the export shipside rate and the local rate. These warehouse facilities are used by cotton merchants both at Houston and elsewhere, who are not directly interested in warehousing, I understand. (R. 425). There has been some difference of opinion in our organization as to whether [fol. 138] there should be a difference in the rate dependent upon the particular geographical location of a warehouse in the Houston Industrial District, but the general opinion is that geographical location should have no effect. If there is an advantage in the geographical location, I do not believe in artificially withdrawing that advantage. Our Company is interested in a compress and warehouse that is adjacent to the waterfront at which there are no wharves for serving ships direct. Our position is that that warehouse should take a local rate just as other warehouses in Houston. There would be nothing to hinder us from construct-

ing a wharf there. Our position is that the investment would not justify the expenditure of (R. 426) sufficient money to build a wharf. The revenue that I would get out of loading direct to steamers would not pay us to erect a wharf. I investigated the proposition and decided that it was not a good investment. I did not investigate far enough to determine whether the constructing and maintain- of wharves along the Houston ship channel is a matter of very great expense. It would be expensive. We did not obtain any actual bids for the work. We obtained estimates, and determined that the expense would be so great that it would not pay us. (R. 427) Sanders and Company purchases cotton at interior points and concentrate at Houston. We purchase a part of that cotton at compress points where cotton might be concentrated, and it makes no difference to us whether such cotton has been previously concentrated there or not. We make the price on that cotton by figuring the value of cotton in Houston and deducting the freight rates from the particular points. (R. 428). Generally speaking the difference in our bid would amount to the full difference in the freight rate. If [fol. 139] we had a lower freight rate based upon our ability to sell that cotton and rehandle it, we would bid a higher price at that point. Of course there are numerous other considerations that enter into price making. (R. 429). In buying cotton, fractions of pounds are disregarded. Cotton at present is worth 30¢ per pound. The selling of exchange and sudden fluctuations in the exchange market effect the price we pay for cotton, and such fluctua- [fol. 140] tions may take place between the time we buy and the time we sell. We always figure that the fluctuations will take care of themselves; it is up one day and it will be down the next. (R. 430). They may vary as much as 50¢ or 75¢ on a bale on sale.

The Shippers' Compress Company owns two compresses, one at Clinton and one up-town. Clinton is on the ship channel within the city limits of Houston; in getting the cotton to shipside from the Clinton press, we use a dray, barge, and a service switching. (R. 431). If the storage capacity of the Shippers' Compress Company was 100,000 bales instead of 30,000 bales, and if we could secure the business to operate that large a plant, I think we would be justified in establishing our own wharf.

Cross-examination:

At the bottom of page two of the exhibit, the barge rate is shown as 14¢ per bale from compresses to various wharves. There is also an item for loading on the barge for 10¢ per bale, and that means that the barge rate, plus the loading onto the barge is 24¢ per bale. (R. 433). The cost is not made any larger for unloading; they load from the barge direct to the ship. I said that all of the Cotton Exchange were in favor of maintaining the difference in the rates. I said there was some division of opinion as to whether or not a compress located on the water front and delivering direct to the steamship should have the same rate. I have heard the opinion expressed by members of the Houston Cotton Exchange that it is not equitable for a compress located alongside of the water front, that can make delivery to the vessel, without drayage, to enjoy the same rate as compresses that cannot effect that delivery. I do not think there are many members who believe that. There are quite a number (R. 434) who would like to see a higher rate charged from a competitive standpoint, because we usually like to stick our competitors as much as possible. The two compresses that can make delivery to the vessel [fol. 141] without the expense of drayage, have an advantage over our company, Sanders & Company. I think that is a business proposition that I could handle myself. If I want to build a warehouse to load these steamers, I am at perfect liberty to do so. I am not willing to bear this disadvantage until that time, but it is a situation that I do not see how we can get by. I would like to be relieved from it if possible. There are quite a number of cotton interests that cannot afford to develop water front facilities, but they have the privilege of using the water front facilities of the other compresses. (R. 435). They can use them to the same advantage, with the exception of dividends they get from their compress stock if there are any. We do practically all of our business at the Shippers' Compress Company at Clinton. Clinton is about 10 miles from the Courthouse, and about five miles from the Houston Compress Warehouse on the ship channel. It is about four miles from the Turning Basin Compress. Delivery to ships is made by barge, switching or trucks. (R. 437). Clinton

is farther down the channel than either the Houston Compress or the Turning Basin Compress. The barge line is owned by various members of the Houston Cotton Exchange principally. My firm has a small interest in it. I have had considerable experience in handling cotton, and in buying and selling cotton. (R. 437). As to whether or not 18¢ per bale as a margin is a factor of any importance, I will say that I don't know of a trade I ever missed for 18¢ per bale, and I would not miss a trade for that. 18¢ per bale is an important factor, but I don't think it limits any firm's business. I will always stand a raise of 18¢ per bale on general principles. At the present time, the cotton business is handled on a very small margin; it is difficult to figure a profit, you may get $5.00 a bale and you may lose $5.00 a bale. The barge price from Clinton is 14¢ per bale. (R. 438). The drayage price is 18¢ per bale, and the switching is shown on my exhibit. I have heard from our [fol. 142] agents in different countries of Europe, in reference to the prices at which Harriss, Irby & Vose, and Mr. Kempner, and Mr. Tiedemann were offering cotton in those markets. (R. 439). Sometimes they offer cotton in competition with us in the markets of Europe at a price 50 points, or $2.50 per bale less than the price we were offering cotton for. That is almost a daily occurrence with Kempner, and is a frequent occurrence with Harris, Irby & Vose, and especially in Spain, it is almost a constant condition as regards Tiedemann. We never extend any accommodations to the people in Europe. Our business is entirely on a cash basis. (R. 440). As regards payment, after arrival of steamers in Europe, business has always been profitable without an exception. We have been in the business about 17 years. I should say that the variation between prices offered by the various buyers for cotton in the interior, is about 50 points, or $2.50 per bale. I do not think that a difference of 18¢ per bale would be a factor in making the price on cotton. It would only be a factor in the profits accruing to the firm that has that advantage (R. 441). It would not enable that firm to buy more cotton or sell more cotton in my judgment, but they might make in the aggregate, over a season's experience, slightly more money than if they had not had those superior facilities. (R. 442).

WITNESS H. H. HAINES

I am Vice-President and General Manager of the Houston Chamber of Commerce, and have held that position since the first of March, 1921. From 1907 to 1917 I was with the Galveston Chamber of Commerce and its succeeding organization, the Galveston Commercial Association, handling traffic matters, and finally as General Manager of the Galveston Commercial Association. Prior to that I have been in commercial life in Texas and in the railroad service in Texas since coming to Texas in 1889. (R. 443.) [fol. 143] Leaving the army I returned to the Galveston Commercial Association and remained there from July 9th, 1919 until March 1st, 1921. At that time I came to Houston immediately. I am familiar in a general way with the conditions and the physical situation relating to the handling of cotton traffic and port traffic at Galveston. I have a similar familiarity in a general way with the Houston situation. Purposes of the Houston interset in the development of water facilities at Houston were twofold, one the development of a port, and the other the providing of an opportunity for the erection of industrial facilities along an extended line. At the other Texas ports, the available land was limited, and the fact that Houston was further inland provided suitable sites for industrial locations. Over 50 lineal miles of frontage can be made available for industrial sites in connection with the ship channel. If they put on the slip system, that would be reasonably extended. The Houston Chamber of Commerce is made up of the general commercial interests in the city of Houston. We have sought to encourage the development of industries and public facilities by encouraging the development of up-to-date industries in up-to-date localities and by putting in those industries all sorts of modern improvements that would lessen the handling costs of goods. (R. 445.) We have aslo encouraged the construction of industries that would best serve this locality which is tributary to the port of Houston. The municipal authorities and the navigation district have expended large sums in constructing facilities, slips and wharves. The expenditure on the ship channel by Federal, State and Municipal organizations is approximately $20,000,000.00, and the city has also organized and

constructed a belt line of railroads to furnish terminal service, running on the south side of the channel from the [fol. 144] turning basin south at the present time. (R. 446.) Provision has been made to extend the belt railway the full length of the channel on both sides. It has been the general purpose of the community and of our organ- [fol. 145] ization to afford outlet for all kinds of industries that may benefit by being located at tide water. We have sought to discourage the construction of facilities on the ship channel which could profitably and well be constructed away from it, thereby reserving the ship channel location as much as possible for those industries that require that sort of a location. There is an increasing volume of traffic generally that must find its outlet or inlet through the Texas Gulf Ports. The facilities at Galveston, which was then the only wharf, were formerly very inadequate. The loss that has been occasioned in the past as a result of congestion has taught us to build for the future. We desired to develop frontage at Galveston that could be used by private interests, but it would require engineering feats of great moment and a great deal of expense to do it. It would be prohibitive for ordinary traffic so long as other land is available at other locations at a lesser rail haul. The facilities which have been provided at Houston are more modern, and more substantial than the older facilities, and better than the majority of the facilities that exist at Galveston. As a result, the insurance rate on much of them is less. They are nearer by rail to a vast section of the (R. 449) territory served. There have been serious congestions at Galveston in the past. We have also at Houston one grain elevator of half a million bushel capacity and another of a million bushels capacity has been authorized, and the port is following out a systematic plan of modern up-to-date development. The congestions at Galveston have involved the detention of traffic in cars for a considerable period. I recall one year when more than $300,000.00 demurrage was assessed on detained cars at Galveston, and a large portion of that was cotton. I do not remember the year. (R. 450.) It was before the war. There have been times when they unloaded cotton on the right-of-way, on vacant lots. With the increasing volume of export busi-

[fol. 146] ness, it is of great importance to a shipper to be assured additional free time as an insurance against loss from congestion. Formerly a cotton merchant in Texas was never absolutely sure that he could make the deliveries that he had guaranteed to make, but with the increased facilities at Houston, Beaumont and Orange, steamship agents now will make guaranteed sailings on specific dates for specific ports, and our cotton shippers are able to sell to the man on the other side, and know that it will be delivered. (R. 451.) It is economical for facilities to be located near the water front, because if the railroads are able to make delivery almost within the reach of the ship tackle, it saves rehandling to the dock. Every additional handling of a railroad car detracts from the yearly value of that car to the shipper as well as to the railroad. Every conveyance that goes on the dock, whether a railroad car or a truck, of whatever capacity, serves to add to the congestion on the dock. Anything that has a tendency to lessen congestion during the peak period is of economic value. For that reason, if in effecting delivery at shipside by railway transportation, we save all the hauling of this cotton over the (R. 452) streets of Houston, all the maintenance and up-keep of tracks and roads, we are performing an economic service. Therefore, in these days of keener competition, it is going to be essential that the facilities constructed to handle the business of this section of the country particularly, shall be constructed where there is the least possible call for extra service to effect the delivery of these commodities to and from the ship. That applies to any port. There has been a very large amount of drayage by wagons of cotton at Galveston, and a lesser amount at [fol. 147] Houston up to the present time, although it is growing here. It would be prudent business foresight that concerns should seek locations where they can eliminate uneconomic service, provided the cost of those facilities would not be so great since the overhead would cause a greater handling cost. Compresses and warehouses away from the water front have been constructed of cheap ma- [fol. 148] terials. The more modern ones are built of concrete. When you build a compress on the water front, you are met with a very very extravagant construction cost. To

make that pay you must do sufficient business over that facility to justify the expenditure. You could not build a 30,000 bale warehouse there and make it pay. It must be larger so that the average cost per bale handled over those facilities shall be reduced, and you must be assured that you will have sufficient business to bring down the average cost per bale. The Shippers' Compress at Clinton is just a few feet from the water. It is a 30,000 bale compress, but it is not a water front compress. The stuff from that compress is loaded on a barge and by the barge transferred to a ship. (R. 454.) The wharf facilities of the Houston Compress Company at Long Beach are a necessary addition to the port facilities in the development of business because they materially conserve the necessary expenditures of efforts in handling the commerce of the port. The navigation district is now engaged in the construction of six or eight additional wharves at a cost of about $4,000,000.00 in order to take care of the increased movement that is coming to the port of Houston. There was not space for the ships that were coming here. (R. 455.) The old Moody Press, now the warehouse of the Cotton Concentration Company at Galveston, was the first shipside compress built in Texas. It is in exactly the same situation as the Anderson Clayton Long Beach Compress. It must have been built for a great many years. I have seen thousands of bales of cotton trucked out of that compress right over to pier 31 and pier 32 for ships. (R. 456.) At that time, we had one rate in Galveston, and that compress had the advantage over the press farther back in the city, just like Anderson Clayton & Company through the Houston compress here had the advantage of their wharf over any other compresses in the matter of handling cost. It cost something to truck there, because it could not all be placed within reach of the ship tackle, but that was the origin of [fol. 149] the shipside compress in Texas. In 1897 the Texas Railroad Commission ordered the same rate applied to points on the Galveston Wharf Company's tracks, as to points on the other tracks. When the two rate system went into effect, Moody & Company was operating that old press, and they got their cotton in for 51¢, the rates at that time being 51¢ and 54¢, and could truck it over to the North German L-oyd Pier, but it did not bother any of the rest

of the compressers in the City because it is a very small factor in the total business handled. The cotton crop in Texas this year is worth several hundred million dollars, which sum has to be provided by the banking facilities of Texas to handle the cotton crop, and it is nonsense to say that any one firm is going to have a material influence on that market. They cannot get the money to do it. There are six shipside density compresses in Galveston, one in Texas City and two in Houston. With one exception, the new one at the Houston Compress they have been operating for years, but nobody has felt the influence of them upon the market. All eight of them up to this time have not been material factors in the marketing of the cotton, and won't be. They can't get the money to be. During all that period of time, there has been a large movement of cotton through other channels. (R. 458.) I do not remember when the two rate plan was put into effect in Galveston, but the Moody Compress operated under both. Since Moody gave up that leased property, and built his new plant, the same situation has arisen on the Galveston Wharf' Company's property, with the new sheds of the Galveston Concentration Company.

WITNESS H. M. CROSSWELL

I am local Manager for Alexander Sprunt & Sons, Inc., home office Wilmington, N. C. My firm is engaged in buying and selling cotton in inter-state and export commerce. The branch of the firm here operates west of the river, principally Texas, Oklahoma, and some of (R. 460) Arkan- [fol. 150] sas. It is interested in the ship channel compress company in Houston, located north of the Magnolia warehouse and storage company on the ship channel, about ⅞ of a mile south of the Turning Basin. The Houston Compress Company's new plant is between our plant and the turning basin. We have had a compress there since about 1913. Our Compress is not a water front facility in the sense that we can truck cotton to the shipside. We are undertaking to install a wharf and wharf facilities opposite our warehouse. Our property is 1,000 feet long (R. 461) parallel-

ing the channel, with an average width of about 375 and a little less than 400 feet deep. We have developed one half of it away from the bayou, and have wanted since 1917 and 1918 to develop the other portion on the bayou, but found that we could not do it because the land would not support the building without expensive construction. In trying to justify the expenditure, we have tried to determine how much cotton we could handle over this dock, and we were not able to figure where it would pay. In enlarging our warehouse facilities, it is necessary for us to do bulk heading which would be a part of the service required in the construction of a dock, so that the expense of the construction of a dock would not be so much in addition. We are putting in a dock 560 feet long, which will possibly accommodate two vessels. The warehouse handles cotton for other merchants than our concern. We also do compressing for the public to the extent of our facilities. (R. 464). When the wharf is installed there, we will operate our entire facility for the public as well as for the particular firms that may be interested. We come in competition with interior concentrators in purchasing cotton, and we have found that competition affects us very acutely in buying and selling cotton. We ship to New England Mills and concentrate at Houston, and the interior concentrator, I would say, has the advantage (R. 465) especially when a [fol. 151] second concentration is involved. I understand that the interior concentrator may ship out direct from his local interior facility. We purchase cotton at interior compress points that are concentation points also. It is very seldom that we know whether it has been concentrated at that point or some other point, before we purchase it, and that question is not a determining factor in the price we fix. (R. 466). Generally speaking, our facilities have been larger than are required for our own business, and we have always had one or more outside accounts. Alexander Sprunt & Sons has been one of the important cotton merchants and exporting firms of America for a number of years. We come in contact with other merchants in purchasing cotton from the interior dealers, and we find that competitive prices vary on an average from a quarter to a half cent, which is from $1.25 per bale to $2.50 per bale. It is not always the same firm that offers the highest price.

Cross-examination (R. 468):

Our limits are affected sometimes by whether or not we have a demand for that particular grade of cotton, by the expenses of handling the cotton, and sometimes we are compelled to bid more than we want to. When we are in an advantageous position, our limit is much higher. On the proportion of cotton that we handle over the wharf, I think it is true that there is about an 18¢ difference in the expense to us of receiving and shipping cotton over that enjoyed today by the Houston Compress Company. (R. 469). When we finish our warehouse, we will be in a position to get our cotton from Texas common points on the 80¢ rate into our plant, and when we put it aboard ship, the only expense on a very indefinite percentage of it will be the expense of trucking. Our dock is 560 feet long, and 16 ft. wide. Back of the 16 ft. is the warehouse, and the depth of our property averages slightly under 400 ft. I understand that [fol. 152] when we truck the cotton by hand up to within 200 feet of the ship, that is as far as we have to pay for it. Trucking from 200 feet of the ship is at the expense of the ship. We have a two-story warehouse, and I do not know whether they will take the cotton upstairs or not; if so, that is an additional charge. (R. 470). We hope to obtain revenue by collecting wharfage from the people that use our facilities. We will save wharfage on our own facilities and save paying wharfage out to somebody else. If the others receive a dockage fee from the vessel, we expect to, also. (R. 471). We felt that it was necessary to put in the wharf in front of our warehouse plant, or change our location, because we had approached the waterfront as far as we safely could without putting in a bulkhead. (R. 472.) A very indefinite percentage of our cotton will be handled across that wharf. A substantial portion of it will perhaps be loaded at the municipal docks, or be shipped out via Galveston, or other compresses according to the position of the vessel. (R. 472) I cannot estimate how much we will be able to load at that wharf. I have hoped for 40% or 50%, but from my observation this season I think it will be much smaller. The shifting of vessels is practiced in Houston. We could not with this facility have one or two boats load cotton going to all the ports of the world and requiring many more boats than the facility would accom-

modate. (R. 473) The facilities complained of here, such as the Houston Compress facilities, were completed and put in operation about the first day of August. Since that time about half of the potential Texas crop has moved. I do not think there has been any unusual condition in the market, in the interior, this season. The condition has been about like it has in other years. (R. 474) We find one [fol. 153] exporter with a higher price in the interior today, and another tomorrow. (R. 474)

[fol. 154] WITNESS J. L. JONES

My firm is Godwin & Jones, Inc., Cotton Buyers. I have been in the cotton business something over 20 years. We buy and sell cotton at Houston. We do not own any water front compresses. I have had experience in buying cotton in the interior as well as at the port. I understand the cost of concentrating cotton in the interior is 25¢ per bale. That covers all the charges for the cotton going in and out of the ports. (R. 475.) To bring the cotton into the port and compress it to standard density, costs us about 70¢ per bale, so that the interior concentrator has a less expense of concentration than we have here. The interior concentrator generally concentrates at compress points, and the compress gets 90¢ per bale for compression. (R. 476.) The 70¢ at the ports covers the cost of bringing the cotton to Houston, such as interest, handling charges at the compress, and all except the loading of the cotton into cars; it does not include freight to Houston. The cost of compressing to high density is 75¢ per bale. Interest on the average of 10 days to get down here, about 35¢ per bale, and sampling about 5¢ per bale; that makes $1.15 total. Deducting the 75¢ per bale differential on the high density ocean rate, and the allowance of 1¢ per 100 lbs. for unloading at the compress, 80¢ total, a net cost of 35¢ remains, if I re-compress the cotton. If I do not re-compress the cotton, and handle it as standard density, I have about 25¢ handling charge added to the 35¢ making 60¢, and then I am about two points on getting the cotton down to a steamer, and that totals up to about 70¢ per bale. (R. 477.) It takes on

the average of 10 days to get the cotton into Houston. [fol. 155] The interior concentrator has the cost of 25¢ per bale at the compress, and whatever number of days he might have interest; he pays for it on the local bill of lading and concentrates it into the compress. If it moves to the ports, he pays that interest; if we buy the cotton, possibly we pay the interest. We pay the draft on presentation of the draft and bill of lading here. The interior concentrator, when he ships out, uses a through bill of lading. He gets his money on an export bill of lading (R. 478.) There is no interest on that. I do not know why so little cotton moves on that class of billing. (R. 479.) I understand that the 25¢ per bale at the interior plant covers the sampling. The charge of 25¢ per bale for handling standard density cotton, is made both at the interior concentration point and at the port. That charge includes sampling in the interior, but does not at the port. (R. 480.) Some compresses at the port make a flat charge of 30¢, and if you get all of the services at the port which you get in the interior for 25¢, it will always cost you about 40¢. That 40¢ would not include loading it out; there would be 25¢ for unloading, 5¢ for sampling, 10¢ for loading, and 5¢ for marking, making 45¢. (R. 482.) I think the difference between the waterside compress and the water front compress is fair and just, and I don't believe that it is going to work any hardship on anyone. I don't believe that 18¢ per bale is going to drive anybody out of business. I do not believe that the advantage of the waterside compress is as high as 18¢ but I cannot pass on that. Even if it were 18¢, I do not think that it would seriously impair the ability of the merchants located back of the waterfront to do business. (R. 483.) There is considerable difference in the cost of the plant and grounds back of the water front. I would natur- [fol. 156] ally rather be on the water front with any size business than back of the water front. The tremendous investment would be the only thing that would keep one from going to the water front. We do not use any of the water front facilities in our business; we use the Exporters' Compress Company, located about one mile and one-half this side of the turning basin on the Southern Pacific tracks. That compress makes a charge of 10¢ per bale for loading the cotton into the cars.

Cross-examination (R. 484):

The 25¢ charge for unloading the cotton out of the cars, includes 10 days storage; it does not include sampling, weighing, or classing. The charge of 25¢ made by the compresses in the interior and the charge made by the compress companies in the port, has nothing to do with the service of compression.

We use the railroad switching facilities to take our cotton from the Exporters Compress Company to the vessel (R. 485). We have no warehouse of our own.

WITNESS W. L. VAN LIEW

I am with Dorrance & Company, cotton buyers and exporters. I have had about seven or eight years in buying and concentrating cotton at Temple, where I was in business on my own account. I concentrated and assembled cotton into grades and lots for export or shipment to the Mills at the Temple Compress. I shipped nearly every bale I exported on through bills of lading via Galveston. (R. 486.) I would get my money on the cotton just as soon as I got my bill of ladings signed. That was a substantial [fol. 157] advantage. If I shipped the cotton to Galveston on a local bill of lading, and then exchanged that for an export bill of lading, I would have to wait sometimes as much as a week or ten days. The item of time in getting to a point where you realize on your cotton is very important to the cotton man, (R. 487) not only on account of the interest, but on account of the large amount of interest that will have to be advanced to a cotton merchant. If you keep your bank satisfied, you can do more business. I am familiar in a general way, with the concentration costs at the ports. I imagine that the concentration charge per bale at Houston would run about 60¢. The interior compress extends concentration privileges to the shipper as an inducement to him to have the cotton compressed there. There are times when they will provide the concentration free in order to get the compression. I had a tariff today from a compress at Garland, where they had removed their concentration charges for the balance of the season. (R. 488.) I think

that the rate for compression at the interior compresses is 18¢ per 100 lbs.

WITNESS J. GARRISON

I am Manager of the Cotton Concentration Company, Galveston, Texas. We have a combined charge of 55¢ which includes the receiving, the weighing, the sampling and the issuing of receipts, and the tagging, 30 days free storage, and delivery to the shipside. In a few instances we make delivery by truck to the shipside compresses, not to the ship. (R. 489.) When it has to go to other piers [fol. 158] than those adjacent to our facility, it has to be drayed, and in that case it would cost 18¢ per bale for drayage.

Cross-examination:

We dray all cotton to the ships. If the shipper should elect to pay his own drayage charge, we would reduce our flat charge for handling to 37¢. The Shipside Density Compress, to which we truck cotton, is not located within 200 feet of the ships; one of its plants is located on our premises. The Shipside Density Compress delivers to the ship, but in most instances, he would have to dray it. (R. 490.)

WITNESS J. V. SCOTT

I am Vive-President and Treasurer of the Houston Compress Company, and am in general, Supervisor in charge of the operation of the Company. I have occupied that position for about seven years. We have one plant about 2½ miles from here in the fifth ward (R. 491), located on the I. & G. N. and the H. E. & W. T. and the Houston Belt Railroads. The other is on the ship channel, and is known as the Long Reach plant. We have 15 or 20 customers that concentrate cotton with us whose offices are scattered all over the state, in Oklahoma and other states. We sample their cotton, weigh it, forward the samples to their offices, tag it, and block it away and hold for shipment. On their

orders, we load it out for them, mark it, compress it. This handling is called a concentration service, and we make a charge of 50¢ per bale for it. It includes substantially the [fol. 159] same service as that just described by Mr. Garrison for the Cotton Concentration Company. We allow fifteen days of free time; they allow 30 days and charge 55¢. (R. 492.) We make a charge for storage in excess of 15 days. We also compress. We perform similar services at the Long Reach plant. We also operate a warehouse and a dock at the Long Reach plant, where we handle cotton and lumber, flour, cottonseed meal, cottonseed cake, rice, and many other commodities. We also have inbound imported goods, such as paper, hardware, cotton ties and bagging. It is our effort to build up a general docking and storage business, and we have just a few months ago organized a department for that service. We send men out on the road to solicit not only general commodities but also cotton. (R. 493.) We also advertise and hold ourselves open for this general business, sending out circulars all over Texas, Oklahoma, Arkansas and other states. Our company is a bonded warehouse under the state and federal laws, and makes reports semi-annually to the Texas warehouse commission, and is inspected by representatives of that department. Primarily, however, we handle cotton. The Long Reach plant was opened in August, and is practically completed now. (R. 494.) For this season, I would judge that about 40% or 45% of our business is Anderson Clayton & Company's business. The rest is for various customers. We make the same charges and perform the same kind of services for Anderson Clayton as we do for other customers, and do not give them any preference, except when we get congested, we ask Anderson Clayton & Company to divert their cotton to their other plant. Last season they diverted something like 25,000 bales; part of it [fol. 160] went to the Magnolia Compress, and about 10,000 bales went to Menkwa Compress and other Compresses. We have done that for several seasons, but that is the only cotton we have diverted. We do that to take care of our customers; because Anderson Clayton & Company is interested in this plant, we feel free to call on them to divert their cotton.

We have three tracks at the Long Reach plant, two tracks that hold about a total of 80 cars, which is the cotton that is

concentrated for merchandising. Those tracks are about 300 or 350 feet from the edge of the wharf, and are behind the warehouse. The third track is on the wharf where we assemble steamship cotton; the warehouse is between our shipside track and our warehouse track. (R. 496.) We keep a separate record of cotton that is handled direct to shipside, and a separate department handles that cotton. We keep a separate record of cotton that goes into the compress and is compressed and moves immediately to shipside; and we keep another record of cotton that comes in and is warehoused. It would not be difficult for railway agents to check and determine which cotton is handled in each way.

The concentration charge of 50¢ per bale covers taking the cotton out of the cars, applying the tags, weighing, (R. 497). Sampling, storing in the warehouse, and in shipping out, marking and loading. If the cotton is to be given high density compression, that takes place after it has been stored away and samples have been sent to the shipper. The shipper sends back a shipping list and orders the cotton out by certain numbers. He may order 500 bales [fol. 161] shipped out of stock. We may have to handle 800 bales to get the 500, and if he orders it compressed we then truck it to the compress, compress it, and then load it in to the cars. Our compression charge is 75¢ per bale; we compress some when it comes in, to high density. (R. 498.) On the cotton that has been brought in and merchandised and then is compressed when it is shipped out, 75¢ for compression covers all of that service; and we hand truck it out to shipside at the 75¢ compressing charge. It is hard to say just what we get out of the compressing; we don't know just exactly what is costs us to truck the cotton. The 50¢ concentration charge, which I said included the loading out, has nothing whatever to do with compression. We may load some cotton without sending it to the compress. (R. 499.) If the handling out is included in the concentration, the 75¢ accrues solely for compression. I understand that that is the same as other compresses make here. Up to this season, our 50¢ charge did not include any delivery to the shipside; it did include the loading out and placing on the cars. We changed it this season so as to include the delivery to shipside, in order to meet com-

petition and hold our customers. They claimed that they could get their cotton delivered to shipside for that rate at Galveston. (R. 500.) We did not have any shipside facilities in which our company was interested before this season. We do that only on cotton which goes through both facilities. On cotton that is not warehoused by us and delivered straight to the ship at our wharf, we charge 75¢ per bale also. In that 75¢ we include delivery to the berth of the steamer, or within 200 feet of the ship tackle; that is a different class of business.

[fol. 162] The same charges apply at our up-town off of the water plant. (R. 501). The concentration charge of 50¢ there includes bringing the cotton from the off of the water plant to the ship. On cotton shipped in for merely high density compression, and not for concentration, the 55¢ charge would include the cost of bringing it from our up-town plant to the water. I do not know that we have had any of that business this season. Up to a month ago we were concentrating all of Anderson Clayton & Company's cotton at our back of the water front plant, and were also handling the Texas Farm Bureau account there. The latter began to accumulate, and we had to send Anderson Clayton & Company's cotton to the Long Reach plant because their cotton would probably move faster. The cotton is brought from the up-town plant to the ship by switch service in cars; the distance is about five or six miles (R. 502). We pay the switching or drayage out of our 50¢ charge. The switching is $8.10 per car, I think. The Houston Compress Company is practically owned by Anderson Clayton & Company. We hope to do a general storage business on other commodities during our slack season, and in that way keep our plant operating the year around. (R. 503). On the cotton moving direct to shipside, we do not get the document. Our information comes from the solicitors for the Steamship Lines; they 'phone us that they have a car of cotton, give us the marks and the car number, and tell us that it is for steamship so-and-so, and we order it on the steamship track and unload it. Our record will show the car number, the number of bales, and the marks that move in on that track. It will show who was the shipper and where it or-ginated. That cotton is brought [fol. 163] in on separate side of plant, on the wharf side, on

the track that is on wharf. (R. 504). We render no service on that cotton; the shippers merely wish to avail themselves of our wharf, and we do make a wharfage charge. Some [fol. 164] cotton comes to us already concentrated in the interior to be merely compressed and loaded direct to the ship; I do not know what rate is applied to that cotton by the carriers. (R. 505). Our records will show who are the shippers, the points of origin, the car numbers and the marks. The railroads can determine from our records what that cotton is. We also bill our charges from that same record, so that it could be determined at any time whether we collected a 50¢ charge for cotton concentration, or a 75¢ charge for compression, or the normal charge of 4¢ for unloading the cotton if it goes direct to shipside. The identity of the cotton can be preserved, and a bale can be traced from the interior points and kept track of until it goes to the vessel. (R. 506). It could be done except on this class that moves directly to the steamer; the record on that is by car, and the other would be by tag numbers. (R. 507). I would think that about 70% of the cotton handled by Anderson Clayton & Company at the Long Reach plant up to the present time, has been re-loaded into cars, and reshipped by rail; that would also apply to the other plants. At the beginning of this season, all of Anderson Clayton's cotton was sent to the fifth ward plant with the Farm Bureau cotton, and other customer's cotton was moving to the Long Reach plant. The part of Anderson Clayton's cotton arriving over the I. & G. N. railroad was going to the Long Reach plant (R. 508) and about a month ago it was necessary for us to ask Anderson Clayton & Company to send all of their cotton to the Long Reach plant in order to take care of the Farm Bureau. The Long Reach plant could not care for all of the Farm Bureau cotton, and besides we have a special classing room at the fifth ward plant provided for their own use. (R. 509). [fol. 165] The President of the Houston Compress Company, Mr. R. C. Fulbright, is not very active. With reference to Anderson Clayton & Company's business, the Houston Compress Company is a separate organization; Anderson Clayton & Company does not know anything at all about the handling of other customers cotton, they don't know who our other customers are, they don't know any-

thing about what they are concentrating or the nature of the business. The records are kept in my office.

We have a charge at the Long Reach plant of 50¢ for concentration. (R. 510). That does not include a charge for placing the cotton aboard the vessel, but does include a charge for delivering to the point at which the cargo is assembled for the steamer, namely, for delivering it within reach of the ship tackle. Our wharf is about 1,500 feet long, about 30 or 40 feet wide maybe. The compress is about 150 feet wide inside. The wharf is 40 feet wide, intervening space 50 feet, the warehouse 190 feet, 150 feet inside and 40 feet back. There is a transfer plant located at about 20 feet from the north side of the warehouse, and there is about 50 feet from the wharf to the warehouse. The Steamship Company comes up to the wharf on only one side of our plant. (R. 513). The compress is at the end of the warehouse. The wharf is 40 feet wide, there is an open space of 50 feet, the warehouse adjoins the open space, and the warehouse is about 150 feet from wall to wall. (R. 512). The compress is at the end of the warehouse. (R. 513).

All of our customers, including Anderson Clayton & Company are charged 50¢ for their concentration privilege, [fol. 166] and all of them are charged 75¢ for compression. The 75¢ also includes the cost of delivering cotton, cost of compression to the ship tackle, in case they take the compression service and no other; if they take the concentration service, the 50¢ for concentation includes the cost of delivery to the ship tackle. (R. 514). I cannot say what the cost of trucking is. (R. 515). The two tracks behind the warehouse are used for delivering cotton to the compress for merchandising or for compressing. The third track serves the wharf. We own all three. We collect wharfage from vessels whom we serve there. (R. 516.) The wharfage is assessed against the shipper, and the dockage is assessed against the vessel. We solicit inbound and outbound vessel's business. The inbound is discharged from the vessel onto our wharf; most of it is put in storage, and the rest loaded into cars on the railroad and carried off. I do not know whether our tariffs are filed with the Interstate Commerce Commission or with the Texas Commission. (R. 517). We charge 75¢ for compression. The

cost of delivery to the shipside or aboard the railroad car is included in the handling charge of 50¢. The compression is a separate proposition; it is simply and solely a compression charge and does not include those delivery charges. We do not unload any cotton from the box car into our warehouse for delivery to the steamship agent; we unload that on the wharf. The cars are ordered in when the steamer is ready to take it. If the steamer is not there it would be ordered in and put into space where the cargo is assembled for the steamer, in a portion of the warehouse which is separated from the other department in which we handle concentrated cotton. There is a separate department for that (R. 518). I do not know what it cost Anderson Clayton & Company to compress cotton. Very [fol. 167] little flat cotton is stored in either of our plants. Most of the cotton that comes in flat is compressed on arrival at either one of our plants. A small portion of the Farm Bureau's cotton comes to us flat, about 15% or 20%. The rest is compressed in the interior (R. 519). The storage rate at the Long Reach plant after the expiration of free time is about 8/10 of a cent a bale per day. The tariff states it as about 25¢ per bale per month, based on the average stock on hand each day, that averages about 8/10 of a cent a bale per day. The wharf at the Long Reach plant is an open wharf, and the plant it serves is located on the wharf. On cotton that is destined direct for shipside which moves in cars to a placement on the track on the wharf, our labor unloads it; and we make a charge for that unloading against the shipper (R. 520). On cotton received when the ship is not prepared to accept it, such cotton is unloaded and placed in the warehouse adjacent to the wharf, in a small portion of the warehouse that is set aside for that business. I think that that portion of the warehouse is about 40 feet all along the plant, 40 feet from the edge of the open space towards the center of the warehouse. Cotton placed in that designated place is unloaded on the wharf out of the cars, and trucked into the space and set in this space for the steamer. The same charge is made as would be made if the cotton was unloaded direct from cars on the wharf (R. 521). When that cotton moves out from storage, the stevedore accepts delivery from that point, and trucks it under his arrangement with the Steamship com-

pany to the side of the ship, if it is within 200 feet of the ship's tackle. There are times when the cotton will have to be moved to another space for the steamer to bring it within 200 feet of the ship's tackle, and our men do that. [fol. 168] When cotton is merchandised and then compressed to high density, we deliver to the ship at the berth where the steamer is docked. It may be docked at berth #4 which is 1,750, or may be 1,600 feet, from the compress (R. 522). We undertake to place it alongside the ship as close as physical conditions will permit, rather than at a point within trucking distance of the stevedore. We have to do that. I do not know whether or not we get a bill of lading then. The shippers do not get it through us. The ship makes application for the berth and my office furnishes that, and tells them where to go. I do not know why 70% of the Anderson Clayton cotton from the Long Reach wharf was moved by railroad. They gave us the order to (R. 523) load it in cars, and we performed that service for them. We still perform compress service at our old back of the water front plant. Delivery to shipside is included in our handling charge. We have not had any cotton for compression and delivery to shipside this year. I think we had some last year; we did not include delivery to shipside in the compression charge last year. Where the cotton is to be merely compressed in transit, the business is handled through the shipside plant (R. 524).

The fact that our warehouse is only about 40 feet wide makes it necessary for us to assemble a part of the cargo back of that wharf in our warehouse facility in order to assemble a sufficient amount for the ship, and that is a disparity in the construction of the warehouse. We could not say why the cost to us of compressing cotton should not be approximately the same as to the compress owner in Galveston. I do not know the conditions that exist at the other compresses (R. 525). There are some plants that could not compress cotton may be as cheap as others. The cost of demurrage and other things enter into the cost of compression at the end of the season. Our plant is a [fol. 169] modern and up-to-date plant just as Mr. Kempner's is (R. 526).

These customers of the Long Reach plant are possibly competitors of Anderson Clayton & Company. We hope to make a profit on every service rendered to competitors. If we do, I do not think that will give us a commercial advantage over the competitors, because we have imposed on Anderson Clayton & Company when we get congested. The cost of diverting their cotton cannot be estimated. Other customers don't have to do that (R. 527). The Anderson Clayton & Company pay the same for compression as any other company.

[fol. 170] WITNESS C. S. KINNEY

I am superintendent of the Houston Compress Company, and have been in the compress business about thirty years. I have been superintendent in charge of compress operation about twenty years, and am generally familiar with the handling of cotton in compresses and warehouses. (R. 529.) I have been superintendent of the Houston Compress Company about six years. In regard to the service involved in handling cotton from our warehouses at the Long Reach plant—the cotton is ordered delivered to a ship; usually we have space allocated for a ship in advance of its arrival and the cotton is delivered to that space if there is room in that location for it. If not, the cotton is moved to the nearest point possible to that space, and when room is provided in that space by delivering cotton out of there to some other ship, then this cotton is trucked into that particular space allocated to that ship. Often we have to handle the cotton twice to get it within 200 feet of the ship tackle. Our warehouse is 1750 feet long. (R. 530.) The sheds are 150 feet on the inside, and when the cotton is put into the warehouse we never know where it is ultimately going to be delivered, and we have to pick up with the shipping end of it where we leave off with the warehousing; we cannot connect the two together so far in advance, and it is often necessary to truck cotton 1750 feet to get it to the proper space allocated to it. We have a minimum haul of 50 or 100 feet if the cotton was in the compartment opposite the berth in which the ship was ultimately to be located. We have to put the cotton within 200 feet of the ship's tackle.

It is handled by hand truck; we have had very little chance to calculate the cost on our operations at the Long Reach plant because we have only been in business down there for about six weeks, but from the little information that we can gather, that cost runs from 6¢ to 15¢ a bale for the movement [fol. 171] according to the (R. 531) inconvenience and the distance that we have to move for each handling. That is just the labor cost; it does not take into consideration clerical hire or other overhead expense, nor the interest on the expense of investment; it is just the common labor.

Mr. J. V. Scott: The cost of this plant was approximately $1,500,000.

Witness: We have space set aside for a ship that will accommodate two or three thousand bales, and if we have six thousand bales going to that ship, we would have to put the overflow in some other compartment. Sometimes we have ships arriving close together which have been assigned to certain berths (R. 532) and ships will get tied up for some reason or another and the ship that is expected to come in last gets their first, in which event it is necessary to ship the cargoes by hand trucking. We have to stand that expense as warehousemen and wharfmen. We pay a minimum of 35 cents an hour for labor, and during the rush season we have to employ a good deal of over-time, for which we pay time and a half. We do not get efficiency out of nightwork that we do on day work, and we have to pay 5 cents an hour more for night work. The expense of delivery from the warehouse to the ship at Long Reach is considerably more than putting the cotton on the cars at the fifth ward plant. (R. 533.) Taking into consideration the switching, the cost of getting to the shipside from the fifth ward plant would be a little more than the cost of getting to shipside from the Long Reach plant, but very little more. The cost of putting it in the cars alone is very much less at the tenth ward plant than it is at Long Reach. We have had cases where the cost of delivering cotton at Long Reach amounted to more than the delivering of some cotton of the fifth ward plant to track No. 1 on the wharf front at the Long Reach plant. Those conditions vary. (R. 534.) At [fol. 172] the present time we are running both the fifth ward plant and the Long Reach plant night and day. Last

year we ran the tenth ward plant night and day almost the entire season, up until after Christmas. If we did not run both of those plants at the present time night and day and if we had not run the fifth ward plant last year night and day, the amount of demurrage we would have to pay would not be much short of $5,000.00; it may be more than that. At the present time we are discharging about 150 to 200 cars a day at each plant. If we did not run the plant all night, it would not take very long to run up the demurrage; shipping as we do and unloading about 200 cars a day, we have something like 900 cars in for us now. It will take about four days and a half to unload that. (R. 535.)

The I. & G. N. Railroad serves our Long Reach plant in shipping to shipside. If we had a large shipment we would try to load one hundred bales to the car; it would cost about 3 cents a bale maximum to load into that car, including the topping. Take the cotton out of the warehouse at the fifth ward plant and put it in *in* the car at 50 cents. The unloading of that car comes into the charge that we have down at Long Reach. The cotton in the fifth ward is warehoused and put back into a compartment right opposite a 22 foot platform and when we load cotton out of that compartment we load the car right directly in front of that compartment and do not have to truck it any distance. (R. 536.) Our maximum trucking distance at the fifth ward is about 100 feet. It costs about 6¢ to 15¢ a bale to truck cotton at our new plant. It costs so much less to truck cotton at the old plant than at the new plant, because we have a higher labor cost at the new plant; we cannot get [fol. 173] labor to come out to the new plant for the same money. They will go to the fifth ward plant because they live there, and the new plant is down the Bayou; they pay them 5 cents an hour more for one thing. (R. 537.)

Cross-examination:

The movement of vessels at our wharf is controlled through our shipping department and Mr. Scott's office. Mr. Scott has a man employed for that purpose, Mr. Stockton (R. 538). Mr. Stockton designates what berth the steamer is to take. The compress occupies about 40 or 50 feet at one end of the 1700 foot plant; the nearest ship

berth to the compress is about 250 feet — 200 feet to the nearest part of the ship, that is, to the ship's bow or stern. We would hardly deliver the cotton to a ship located at the nearest berth to the compress, because we warehouse all of our cotton. The cotton is received, tagged, weighed, sampled, classed, and separated by grade (R. 539) and run to the compress and compressed on arrival and re-stored back into this big warehouse awaiting shipping instructions. We know where the cotton that the ship is coming for is located in the warehouse. It is not within the power of the Company to designate the berth of the ship near to that cotton, because the shed is 1700 feet long and there is cotton of every grade and every description in that shed from one end to the other. There is some of every kind of cotton in every compartment; when berths one, two and three are occupied for shipment, you place this ship in berth 4 and your cotton may be in berth one. The shifting of ships from one berth to another is only done in the *in the* [fol. 174] case of a mix-up when the ships get off of their schedules and the ships has to be docked at another place to take care of her while the other ship is occupying her berth (R. 540). The average lngth of those ships is about 400 feet. That would mean 400 feet off of your 1700 feet of trucking, if you had the run; if you did not have the run you would have to truck it to the extreme other end of the ship. My statement that 6 cents is the minimum cost for trucking is based on the actual cost as shown by the several different foremen's reports; of course that takes in over time. When a ship is coming in to take on cotton, all the cotton to go on that ship will not be in one compartment of the warehouse. (R. 541) It may be scattered from one end to the other. Some of these compartments are upstairs, and the cotton will have to be brought downstairs. The ship *has* never shifted from one place to the other because the cargo was scattered. They shift when one is occupying a berth that the other should be occupying. (R. 542).

HEARING AT DALLAS, TEXAS, OCTOBER 25th and 26th, 1923

WITNESS BENJAMIN CLAYTON

I am a member of the firm of Anderson, Clayton & Company, of Houston, Texas, cotton merchants and exporters,

and I have been engaged in the cotton business for about 20 years, having been located in the Southwest all during that time. I have bought and sold cotton all over the South. (R. 546). The headquarters of our firm was originally at [fol. 175] Oklahoma City and at present are at Houston. In buying and selling cotton, my firm competes with all other firms located in the same territory in the Southwest. There are two characters of business. One is domestic business, cotton which is merchandised and sold to domestic mills, and the other is export business, buying and selling cotton to foreign mills or foreign countries. As cotton is bought from first hand in the interior it is bought in various grade and staple, and does not come in uniform lots of the same grade and staple (*T.* 547). One farmer may pick a part of his crop before rains have occurred, and it will be high grade; another part after rains have occurred, or after frost and it will be a lower grade. In order to merchandise that cotton, it is necessary to assemble lots in merchandising quantities. The unit of trade between merchant and consumer is 100 bales, 50,000 pounds approximately; one mill as a rule does not consume cotton of more than one or two qualities. One mill making one character of goods will consume one character of cotton and another mill another, so that those grades must be assembled in a central place into even running lots. For that reason it is necessary either in the interior or at the port to bring your purchases together from various directions so that these even running lots might be assembled. The three methods of shipping, the through export bill of lading from interior points, the bill of lading to the port for export, and concentration and merchandising at the port to be later sold in foreign commerce are followed generally speaking in my [fol. 176] own business, and I believe that at least 70 per cent of the sales we make are with the option of shipping on through bill-of-lading, port bill-of-lading, or custody bill-of-lading. The custody bill-of-lading is the bill-of-lading given by the agent of the steamer at a time which is guaranteed to be not more than fifteen days prior to the arrival of the steamer in port. A port bill-of-lading is one given by the agent of the steamer at a time when the steamer is guaranteed to be in port or within 50 miles, I believe, of port, and a through bill-of-lading explains itself. It is one

issued by the Railway Company jointly for the Railway Company and the Steamship Line. The custody and the port bill-of-lading are obtained only at the port. A through bill-of-lading (R. 549) is one issued by the rail carrier. I believe that England is the most important consuming market for the cotton merchants of this territory. It is my understanding that the English merchants customarily gives to the producers the option of using through bills-of-lading or port bills-of-lading, and that is true of the majority of our business. That is true of Italy and I think of France. Our traffic manager states that we have the option on about 75% of our business (R. 550). Therefore we have the option of shipping on the through bill-of-lading on about 75 percent of our business, but we do not actually use that option except when we ship through from Houston to Galveston. The custody bill-of-lading enables you to secure your bill-of-lading 15 days before the steamer arrives, which is an advantage in the matter of interest. The port [fol. 177] bill-of-lading is of similar advantage but not so great. Japan is an important consuming market for the cotton of the Southwest (R. 551). We usually have the option of using a through bill-of-lading on business to Japan. I have personal supervision over our sales, and am familiar with how they are made. The effect of using a through bill-of-lading is found principally in the facilities afforded the shipper for through carriage from point of origin in the interior to foreign destinations, and in the matter of interest which he pays by reason of securing his document at an earlier date. The concentration service rendered in the interior is practically the same as that rendered at the port in its effect (R. 552). It is done for the same purpose. Cotton is extensively concentrated at the warehouses of the local standard compressors, or high density compressors located in the interior throughout Texas and the Southwest. Except at one or two points where they have large warehouses, that is practically all of the interior concentration. The service charged by the warehouse at most interior points for the concentration privilege is 25 cents per bale. It costs the cotton merchant 50 to 65 cents per bale to have that service performed at the port. On a substantial part of the cotton that comes in competition between the port merchant, exporter and the interior merchant exporter, the

charge paid by the port merchant exporter of 50 to 65 cents per bale for concentration at the port is additional to the charge paid by the interior merchant exporter for the service of concentrating at interior points (R. 553). Based on our own purchases, about 48 per cent of the cotton which [fol. 178] comes in competition between the port merchant and the interior merchant already bears and represents the cost of interior concentration. I mean that there is virtually a second concentration; the same is true of cotton which originates at the compress point and which passes through the compress there without the slightest concentration as it is generally understood, not involving any service on the part of the rail lines previous to its assembly on the compress platform at the interior concentrating point (R. 554). That means that that cotton at the port would have already had the interior concentrating expense. The 25 cents per bale is charged by the compressors in the interior for service given to the merchant, and none of it accrues to the rail line. The charge is for the opportunity to merchandise his cotton on the platform of the compress. The merchant shipping directly from interior concentrating points through the port of Houston or Galveston is able to deliver his cotton at destination in Europe for at least 10 cents per 100 pounds less aggregate costs, with the subtraction of 3½¢ arbitrary which it costs him because he has the shipside rates (R. 556). After he pays the 3½¢ difference in the rate which he pays for the advantage and the value of the through or local export bill of lading, he is still ahead over the port concentrator 6½¢ a hundred. The 10¢ additional expense that the port concentrator has consists of unloading, weighing, sampling, storing away, and final delivery within ship tackle, or loading in to cars. I am speaking particularly of cotton that has been concentrated in the interior and then [fol. 179] is purchased at the concentrating point by the port merchant who concentrates at the port (R. 556). The port merchants are competing in the buying market at these various concentration points in the interior and are bidding against merchants who are located in the interior and who may ship direct from those facilities. The port merchant would have the privilege of shipping direct from those facilities, and the interior merchant has the privilege of rehandling at the port if he so desires. Forty-eight percent

of our purchases last year in the interior were concentrated and had already paid the 25 cent charge (R. 557). Of that 48%, perhaps half of it originated at that compress point and perhaps half of it originated at outlying points and was concentrated there. When I speak of a concentration charge, I speak of a charge not for bringing the cotton from an outlying point into the compress, or not by reason of its having moved in that way, but the charge which is assessed by the compress company against the owner of the cotton by reason of its having been put on his facilities. The 25 cents is paid whether the cotton originates in the town itself where the compress is located or whether it originates at a non-compress point and is moved into that compress point, so that the total of 48 percent had previously paid 25 cents per bale for compress privileges, warehouse privileges, and etc. All cotton before it moves to final destination must be merchandised somewhere along the line at some established concentration point (R. 559). The charge of 25¢ per bale [fol. 180] paid in that case is the same cost that the man has to pay who concentrates his cotton at a concentration point; it is the only charge made against the owner of the cotton for the privilege of using the compress platform and warehouses as a merchandising place. Whether he merchandises his cotton on the compress platform or concentrates it at some concentration point and unloads it and keeps it there until he can get up more cotton, the cost is the same, unless he ships it to the port.

I mean by a "port merchant" a merchant who concentrates substantially all of his cotton at the port, and I mean by an "interior merchant" (R. 560) one who concentrates and merchandises substantially all of his cotton in the interior. I make no distinction between the merchant who might have his own facilities and the cotton factor who has no facility; a great many interior merchants concentrate at the port. Some of them use their own facilities and others use the facilities provided for the public use. At these interior concentration points we find the competition of merchants from everywhere.

We do our buying business, and I think other merchants operate in substantially the same way, over the telephone and by telegraph from interior f. o. b. merchants, men who operate in a circumscribed territory. They gather cotton

at the compress points from a small territory nearby and sell it to merchants such as ourselves. (R. 561). On so doing we come in competition with practically every merchant such as ourselves in the business. Upon given days we find merchants from Dallas, Galveston or Ft. Worth at [fol. 181] the same places with prices substantially higher than ours. Sometimes our prices are higher. They vary as much as $2.00 to $2.50 a bale. When a man buys a bale of cotton, he must place $150 of his capital in that commodity at this point of origin, and that capital remains invested in a great many instances (R. 562) until the bale is actually delivered in the mill of the consumer in Europe. It takes an enormous amount of resources to handle a business of that sort in volume. Those resources are nearly always borrowed. In a commodity representing a value of $150.00 a bale, or $15,000 for each unit of trade, it does not seem reasonable that an advantage of 18¢ a bale, which it has been charged here that we have, but which we deny, would turn things upside down. (R. 563). There are so many factors that enter into competition in this country and in Europe that are so much larger than 18¢ a bale that it seems too small to be considered as an important factor in the whole business. There is real competition in the cotton business. The reason for that is that the cotton merchant has no plant; a man may move from North Carolina to Texas tomorrow and become on the next day the strongest competitor in the market; he can take out his bill-of-lading to the point at which he sells his cotton, or wants to concentrate it, and obtain accommodation from the bank easily. Cotton is a liquid commodity. He uses the facilities of the public. (R. 564).

I cannot give you the average legitimate profit of a successful exporter in handling cotton. I would give you the [fol. 182] variation; I think it is the variation that counts. I do not know what the experience of other merchants is as to the amount of profit they make per bale. I am not in a position to state what the average profit is. (R. 565). I would accept the statements of other merchants, but there are so many factors that enter into it, the factor of the ability of that particular man, his financial resources, his application to his business, his reputation in the business, his outlet in Europe, the character and ability of his agents

in Europe. I take serious issue with Mr. Kempner and Mr. Reed when they state that 3½¢ a hundred pounds is a determining factor in whether one man stays in business or another one. (R. 566). I dont know of any cotton firm that ever went broke buying and selling spot cotton.

There are interior merchants who utilize interior concentration, port bills-of-lading, custody bills-of-lading, and port concentration. There are port merchants who to some extent utilize all of those methods also. After a merchant concentrates his cotton at the interior press and pays his charge at the press of 25 cents a bale, if he ships that cotton on a through bill-of-lading to the port for export, he has no further expense except the exchange on documents for which he pays perhaps a cent a bale to his freight broker. The man who uses at present the local export bill-of-lading receives a service of substantial value and one which must cost the carrier something to perform. By the use of the export rates, the merchant in the interior is enabled to [fol. 183] put his cotton aboard cars, ship it through to the steamer direct, obtain his port bill-of-lading or ocean bill-of-lading, without the necessity of taking possession of his cotton in any way; and without the responsibility and expense of finding the necessary resting place, transfer place, switching, and without any liability for demurrage. Demurrage is one of the most important elements in the difference between the through bill-of-lading and the local domestic bill-of-lading. It might be urged that the man who uses the through bill-of-lading or the local export bill-of-lading does not in fact use any more car detention than the man who uses the (R. 568) local domestic bill-of-lading, but I think that the facts that upon a local export bill-of-lading the shipper is practically guaranteed from the accruing of storage is the important fact, and whether he actually benefits on each car on that or not is unimportant. He pays for insurance. If his particular car should suffer a detention at the port, he has no demurrage to pay under the local export bill of lading for twelve days, and upon subsequent detention he pays at the rate of $1.00 per day per car, whereas on a local bill-of-lading only two days free time is allowed, and $2.00 per day assessed upon the first four days of detention, $5.00 per car on each subsequent day. If the shipper using the local domestic bill-of-lading should

use upon a single car the same detention of 12 days which is permitted on a local export bill-of-lading, he would pay $48.00 demurrage, while the man shipping on a local export bill-of-lading pays none at all. (Record 569). The demurrage charges on local bills of lading make it necessary [fol. 184] for the man who uses that bill to provide storage facilities, by renting, leasing, or building them, to take care of that cotton, whereas the man using the thru bill does not have to do that. The business we do in Houston and which other- do who use our facilities is purely a merchant business. The facilities of the Houston Compress Company were not built as transit facilities and could not be maintained on that basis; they were built for merchandising facilities. The cotton which reaches us is of various qualities, which we don't know until it is unloaded in our premises. We sample and weigh and classify and assemble it into even running lots, hold it there until it may be sold, or until the time of shipment arrives. We have for a number of years concentrated a large quantity of cotton in warehouses which we own in the North side of Houston about five miles from the ship (R. 570) channel. When Houston began to assume some importance as a port, we began shipping cotton from our Northside plant to the Municipal Wharves on the Houston ship channel in an effort to clear our shipments for export thru the Port of Houston instead of through the Port of Galveston. We found the facilities inadequate to the volume of business that was offered at Houston. It took a good deal of effort as a rule to secure the placing of our cars after they were loaded at the Northside plant. Steamers for all ports were not enabled to call at the Port of Houston because the facilities were inadequate, and those which called found congested docks and were not able to handle the cotton as expeditiously as they could have if more wharf facilities were provided. We first planned to build a wharf there with a [fol. 185] smaller warehouse than the one we finally built. We decided to make an effort to utilize our facilities and our organization, which was a very large one, in the warehouse business for the whole year instead of the seasonal portions of the cotton business. We realized that the facilities which we had at the North side and the ones which we thought (R. 571) of building in the ship channel represented

an enormous investment which was used for only a small part of the year in the cotton trade. We realized that we had a substantial and expensive organization which was busy for only half the year. We finally adopted the plan of building such a place that we might attract a large storage business in general commodities during the summer months when the cotton trade was at its low ebb, but we might attract an inbound cargo business, and employ our handling facilities and wharf and storage facilities for the general public. We employ our organization constantly instead of seasonally. That was our particular object in building the long reach plant.

When the interior merchant ships on a through bill-of-lading to the mill, his expense and responsibility are ended. The merchant who concentrates at Houston or Galveston has to pay additional charges at both places. The Ameri- [fol. 186] can Mills trade represents practically half of the consumption of American Cotton in the world, more than half this year. Port concentration is only practicable when you recompress the cotton at the port, that is because when it arrives at the port it is sampled on both sides leaving very large openings in the covering of the cotton and the cotton must be recompressed in order to cover up those openings and make a neat package. The merchants concentrating in the interior and shipping directly from the compress point to an American Mill is enabled, in competition with the port merchant to concentrate at the port, to deliver his cotton at an American mill 50¢ per bale, representing the cost of rehandling at the port, and 75¢ per bale representing the recompression of the cotton, more cheaply than the man (R. 573) who concentrates at the port. We have practically withdrawn from the domestic mill business. We do not attempt to do any very large domestic mill business. Occasionally we make sales to these domestic mills from Houston, but we are practically out of competition at Houston, and so are all other merchants in Houston. The cotton can be recompressed to standard density for 60¢. The cotton that goes to the New England Mills is not usually high density cotton. In order to ship a package of neat appearance that will be merchantable, I think they would have to recompress the cotton even to standard density as a practical (R. 574) matter, though

nearly all of the cotton that comes to Houston is high desited when it arrives. We don't figure on using it in the New England Mill business. There is no difference in the rates on coastwise steamers on standard density and high density. The recompressing is not only to cover up the sampling places, it is also to get the patches on it which bring the tare up to the maximum allowed by the mills, and that is an important part of our business, especially [fol. 187] at 30¢ per pound. I do not think that the only purpose of compressing cotton in transit is for saving transportation facilities (R. 575). If cotton is concentrated in the interior, it is not compressed wholly for the saving in equipment. It is compressed also as a facility to the concentrator, and to the merchant. Upon the cotton coming into the interior compresses and the concentration points, if it is being handled by the interior merchant selling to the New England mills, it is sampled on both sides of the bale and then is arranged in order and later shipped out at standard density to the New England mills. When he compresses it he can have his patching put on to get his tare, cover up the holes in the bale and get it into proper shape. If we buy cotton in the interior, we cannot have the patches put on and the places covered up at the interior point, because the patches would be cut to pieces again when (R. 576) it arrived at Houston in the process of sampling. The service that is performed at the interior, and the compression, is paid for by the railroad. Of course if the rate is less than 74¢, the shipper has to pay part of it, and if it is less than 56¢, he has to pay all of it. The New England mills prefer standard density cotton to high density cotton. We have attempted to ship high density cotton to only one or two domestic mills, and in at least one instance, they attempted to reject the cotton entirely. They put it back in our hands because it was high density. I do not know whether the mill finally took the cotton or whether we took it back (R. 577) I know they did notify us of a rejection because of its being high density. The foreign spinning mills receive the high density cotton as readily as they do the standard density since the war only. That is all they got during the war and they [fol. 188] became accustomed to it. The charge for stand-

ard compression is 60¢ and for high density compression is 75¢. I do not know what it is in the interior (R. 578).

Up to date the investment that has been made in the shipside plant, wharf, warehouse, and compress at Long Reach by the Houston Compress Company is $1,600,000.00. I think $600,000.00 or $650,000.00 is chargeable to the wharf and the ship. (R. 579). A good deal to my surprise, it de- [fol. 189] veloped when this investigation was started that the shippers through Galveston had been able, during last year, by reason of the rates and practices of the Galveston Compressers, to deliver their cotton at shipside at least 3½¢ or 3¢ less than the export rate, 3½¢ or to the extent of the switching charges less than the concentrator at Houston. That practice is still in effect, and I know that it has been indulged in extensively for a year or two prior to this by shipping through the shipside density compress, and last year I learned that it was indulged in as regards the business of the Cotton Concentration Company at Galveston. Their- was nothing secret about the arrangement at Galveston. It was covered by circulars sent out by Mr. Zimmer in August, 1922. The practice was called to our attention by the Weatherford Crump case, docket 13,991, (R. 580). That can be done by merchants located in the interior as well as by merchants located at the port, and I think it has been done principally by the merchants located in the interior. I do not know whether that has affected the amount of cotton shipped on export bills of lading that would pay the 83½¢ rate. I believe there has been a tendency to ship high density cotton irrespective of whether any actual profit was made, if they just came out even. I believe the practice has been followed because of the neatness of the package, and the freedom from pilferage that it affords. The standard density package is large and loose and is easily pilfered and subject to waste. I believe the shippers have preferred the high density package on shipments to Europe on account of these factors, in addition to the fact that they could get their cotton to shipside for 80¢ instead of 83½¢ by using the facilities of the Shipside High Density Press, and this preference has affected the use of a through bill of lading. The high density package is a more desirable package to the ocean

[fol. 190] carrier to the extent of the difference in stowage, and the east with which the more compact package may be stowed (R. 582). The danger which arose last spring of the high density differential being abolished arose from the circumstances of a great deal of cotton moving by New York to export by coastwise lines from Galveston to New York. The New York lines at that time did not attempt to make a difference between high density and standard cotton, because business was slack with them, and it diverted a good deal of business from the direct lanes of the Gulf through the New York gateway. The gulf lines did consider abolishing the differential, but that situation corrected itself (R. 583). All the shippers I know of who were interested in the big facilities at the port did protest vigorously with the direct lines and urged them not to abolish the differential because it was a thing of value, economy and progress, and we didn't want to see the prog--ess of the cotton business arrested by going back to the standard bale for export, and especially we did not want our facilities, I will admit, practically rendered useless.

If one rate be put in to everyone, including the rate to shipside and to all presses, it would remove the credit of the 3½¢ that we apply against the 10¢ per 100 lbs., the cost of handling cotton at the port. It would abolish that and leave the port concentrator at that much disadvantage as compared to the interior. Port concentrators, both adjacent to and back from the water front, would be worse off than the interior concentrators, and that applies in detail to that proportion of the cotton which originates in the interior and compress points, or which has been concentrated at (R. 584) a compress point before it comes into competition between the merchant who concentrates it at the port, and the merchant who concentrates it in the interior. On the remainder, that which is bought at the [fol. 191] compress point and shipped through to be compressed in transit to the port, and shipped to concentrating points by the final merchant, to the interior merchant, the difference is the difference between 25¢ per bale which he must pay for merchandising his cotton at the interior concentrating and 50¢ per bale which the port merchant must pay for concentrating his cotton at this port. At the present time, with the present arbitrary in effect, that difference is

diminished, the advantage to the interior concentrator on that portion of the cotton is diminished to the extent of the arbitrary of 3½¢. If the shipper using the Houston Compress Company's facilities at Long Reach should be charged 81½¢ (R. 585), and the shippers using the facilities back of the water front in Houston and back of the water front at Galveston, should be charged but 80¢, the effect of that would be to deprive the merchant using the facilities of the Houston Compress Company at Long Reach, or any other water side warehouse of the rates which he is justly entitled to, for the movement of transportation of a commodity which is essentially and entirely in domestic commerce, the whole nature of it being domestic. I make a complete distinction between cotton which arrives for merchandising purposes to go through all the processes incident to the business of merchandising cotton, which may originate at one point, and finally go to 10 or 15 points, or cotton which may originate in 15 points and finally go to 1 point from the concentrating point, I make a distinction between that which goes through the merchandising process in the warehouse at the port and that which reaches the port in a state of final preparation for export, intended and designated for export (R. 586). That distinction exists in the trade as well as with respect to its transportation character.

[fol. 192] I am not prepared to say what the actual cost of putting cotton to shipside after it reaches the warehouse of the Houston Compress Company at Long Reach, but the charges made at other places where a similar physical [fol. 193] situation exists for service which seems to me practically the same, such as the plant of the Memphis Terminal Company, should be referred to. Two corporations operate the Memphis Terminal Company; it has a large warehouse organization and a compress. One conducts a warehouse and storage business, and the other conducts, on the same premises, a compressing business (R. 587). The factors and the merchants there rent parts of this warehouse and operate it themselves, and handle their own cotton in it. I saw the tariff the other day, showing a charge for delivering cotton from the compartments of the warehouse to the location of the compress machines in another part of the same premises of 15¢ per bale. I am

told by Mr. Kinney, who is well acquainted with that plant, that he considered that service about like the service we performed in the same sort of way in delivering at shipside at Long Reach. The Savannah Warehouse and Compress Company of Savannah, Ga., which is located on the Savannah river, has a plant that is not quite as large as our Long Reach plant, I believe, and the average movement of cotton from the compartments of the warehouse to the river is about the same as our movement would be to ship tackle, and there I believe their charge is 15¢ per bale for delivering the cotton from compartment to riverside (R. 588). It is used by numerous merchants. I am not prepared to say whether that is a reasonable charge or an unreasonable charge, but I know it is collected in competition with other facilities, and I conclude that it is reasonable, otherwise competition would force them to reduce it. The cost of handling at our Long Reach plant may be included in our charge for concentration and merchandising. If the cotton is merely high densitied and no other service is performed, we deliver, as I understand it, to shipside at the 75¢ charge. The charge of 50¢ made by the Houston Compress Company last year, was made on account of a similar service being performed and a similar charge at Galveston by the [fol. 194] Cotton Concentration Company. Our charge for merchandising is 50¢ per bale (R. 589). Anyone can concentrate in our warehouse at the charge of 50¢ per bale. If they have their cotton compressed to high density, the total charge is $1.25. In merchandising cotton from f. o. b. dealers in the interior or concentrators, we use principally the weight at Houston. In some cases the weight at the presses in the interior is used. The final weight on which we get paid for it when we re-sell it, is the weight at destination. In actual practice, they sometimes gain in weight between Houston and delivery in Europe from one pound to three pounds, may be five pounds per bale and they lose in some cases from one pound to five pounds per bale; one pound less would be about 30¢ less (R. 590). In some seasons the average gain exceeds the losses; in others I believe the losses would be greater than the gains. This year has been a wet year, and I think perhaps it might not be a particularly good year on weights in Europe. Cotton absorbs moisture very readily and it is hard to detect. There can

be ten pounds of moisture in a bale of cotton, and it will still be difficult to detect by observation.

I do not know whether the cotton would be piled up high in tiers in the warehouse at Memphis or not. It would make some difference in the cost if it were. We tier a good deal of cotton at Long Reach, both round and otherwise.

Cross-examination:

Round bale cotton is high densitied at the Gin; it is loaded on board ship just like it leaves the gin; we sort it, grade it, weight it, sample it. When a merchant in Galveston buys that class of cotton in the interior, and brings it to his warehouse, it would not cost him anything additional at the Cotton Concentration Company to get that cotton delivered to shipside. The Cotton Concentration Company grades all [fol. 195] their cotton but they do not assess that grade against the merchant who ships the cotton there (R. 592). If I buy that class of cotton in the interior, I would concentrate it at Long Reach, pay the Long Reach plant 50¢ per normal bale, that is for two round bales, and they would do the merchandising service and deliver it to ship tackle for me. Mr. Harriss could handle the cotton through the cotton concentration company and they would handle it for him at the same rate. If he wanted to assume a greater charge, and handle it at his own warehouse, rather than handle it through the cotton concentration company, I imagine he would have some advantage which would make it to his interest to do so. If he handled that cotton into his warehouse, he would pay 80¢ from Texas Common Points or 62¢. He would also pay 62¢ to our shipside Long Reach plant (R. 493). If he handled it at his own plant at Galveston, it would cost him drayage to get it to shipside, which is stated to be 18¢ per bale. At Long Reach plant we do truck within reach of ship tackle, but not when it first reaches its first resting place in the warehouse. We do trucking from the tier in which we have placed the cotton in even running lots to steamer, and that is additional to any trucking that would be done by Mr. Harriss. When he unloads the cotton he would probably have to truck it a few feet from that place where he has it blocked off to the dray (R. 594). The distance would depend on where his dray goes; he has rather a small plant at Galveston, I think.

He would perhaps have to truck it 50 feet. There is no press I know of in the state of Texas or elsewhere that deals in cotton. The press operation should not be confused with the shippers' operation. The service of trucking is performed by the warehouse company. We are stockholders in our warehouse; we own all the stock, except qualifying [fol. 196] shares (R. 595). We charge wharfage against cotton moving over our docks at Long Reach; we also charge dockage, or shed hire, against vessels using them. Those two charges were naturally taken into consideration when we decided to build the plant at Long Reach. We also took into consideration the fact that we may be able to obtain the benefit of domestic rates on cotton billed to Long Reach plant. We do not take the position in this investigation that the actual cost to the Compress Company of trucking cotton from the various compartments in the warehouse to the shipside is as great as the difference of 3½¢ per 100 lbs. in the rate itself. There is undoubtedly some economy, how substantial it is I do not know; I cannot estimate it. There is some economy in the handling of cotton from the warehouse itself to a point on the wharf front that the steamer will take it as compared to loading cotton in a car and switching it down to a wharf; but that economy is not 18¢, because the cotton has to be moved a great distance sometimes, and sometimes a short distance, but all of it has to be moved (R. 596). The ship takes possession of it in the portion of the warehouse set aside and constructed for the purpose of taking care of ships for cotton.

At times our prices are lower than our competitors prices, and at times their prices are lower. I think that the Houston Compress Company can compress cotton to high density as cheaply as any other compress in the business. I think it is good for the cotton producer to have as much competition among the cotton buyers and exporters as possible. I think it is particularly to the producers interest (R. 597) to have the most modern facilities that can be provided for his use at logical points. I think it is decidedly in his interest that every element of cost that can properly be saved in the merchandising of his commodity be eliminated between the producer and the final consumer. I do not know that the number of buyers that bid for his [fol. 197] commodity make such a great difference. I sup-

pose there are several hundred now, and I dare say that the number bidding for his commodity and the strength with which they bid for his commodity is no less today than it was a year ago today. We object to an adjustment which places our business at Houston on a greater inequality with the interior merchant than it is now. (R. 598). Under the same circumstances as ours, we have no objection to the application of the same rates to any one who cares to use them, and I think we have shown that by opening our Long Reach plant to the use of every merchant in Texas who wants to use it. We have solicited practically all to ship their cotton to our facilities. We had no aim when we built the plant to isolate it there and use it for the purposes of Anderson Clayton & Company and hold out others who might want to use those facilities for merchandising. It would be entirely illogical for me to object to the Galveston concentrators being able to obtain their cotton delivered to shipside on the 80¢ rate, if that is what I pay. I would think that it was utterly illogical to deprive me of the benefit of my location by an adjustment of rates that was unfair and illogical performing for one man a greater service than you perform for the other, or charging me more for the same service than is charged my competitor in the same locality. (R. 599). I doubt that the purpose of the carriers making their freight rates was to equalize all exporters. I think that the railroads were performing the service on the export traffic at an expense, and that that service was of value to the shipper and a facility to him in the conduct of his business, and they charged for it. Railroads don't charge for every little service they perform in the handling of cotton. They charge, as I understand it, every shipper the same rate for the same service. That rate includes services which are at the disposal of the shipper. If he chooses not to use them, it [fol. 198] is no affair, as I understand it, of the carrier. I don't think the adjustment was made to encourage and promote competition among cotton shippers and buyers. I think the Interstate Commerce Commission has acted on the principle that they were performing a service in export for a shipper which was a greater and more expensive service, and of more value to the shipper than the service they performed for the domestic dealer who shipped

his cotton to his own facilities (R. 600). There is no advantage (R. 601) to the cotton shipper concentrating his cotton in warehouses at Long Reach as far as rail transportation is concerned, as compared to the cotton concentration company at Galveston, who assemble about 400,000 bales a year. There is no advantage as compared to the fifth ward plant of the Houston Compress Company. If a shipper sent his cotton into Weld and Nevill's warehouse, and another sent his into the Long Reach warehouse of the Houston Compress Company, the first would pay for the concentration at Weld and Nevill's plant 18¢ drayage to shipside. The two would be the same as regards rail transportation. The rate from Dallas to Weld & Nevill's warehouse from common points in Texas is 80¢. (R. 602). The rate to the Long Reach warehouse is the same. There is a switching or drayage charge from the Weld & Nevill's warehouse to the shipside which costs $8.10 a car, plus 4¢ for unloading. That approximates 3¢ per 100 lbs. On cotton that goes into the Long Reach warehouse, the total cost is 80¢ plus 50¢ per bale for the concentrating service. The latter is not rail transportation, but merchandising expense. There is no rail charge beyond the Long Reach warehouse.

We have not solicited business for any specific warehouse; we have solicited the patronage of the interior mer- [fol. 199] chants and shippers for the use of the one of the other. I do not know that our representatives offered the inducement that the rail transportation was, to our Long Reach warehouse, 18¢ per bale less than to other warehouses in Houston. They solicited business on the basis of [fol. 200] a 50¢ concentrating charge which included delivery to shipside to meet the competition of the Galveston Concentration Company. I do not know whether they did or did not offer the inducement that the rate to shipside through Long Reach warehouse was 18¢ less than they could put it through in other warehouses (R. 604). I think that the Long Reach plant should enjoy the same domestic rate as any other warehouse in Houston or Galveston. We feel that any adjustment would be unfair which attempted to place a greater charge upon our facilities at Long Reach for rail transportation to any warehouse in Houston or Galveston, if that adjustment left us at

a commercial disadvantage on that proportion of the cotton which is handled by interior concentrators having already, before it comes into competition between the port merchant and the interior merchant, been burdened with the cost of interior concentration (R. 605). By interior concentration I mean the charge of the interior compress or warehouse for the privilege of using its facilities for merchandising purposes. The question of commercial advantage seems to me to be the whole basis of the complaint of Galveston and Dallas. The delivery of cotton from the warehouse to shipside in the case of Houston and Galveston is a commercial matter, it seems to me. I would object to any adjustment which resulted in a greater charge for transportation for the same service to the Long Reach plant than to other plants in Houston and Galveston, moving on local bills of lading (R. 606). The question of whether I object to the same charge so far as the railroad is concerned cannot be separated from this question of commercial advantage enjoyed by interior concentrators with whom the port concentrator comes in direct competition.

[fol. 201] Our charge for the service rendered by our Long Reach warehouse is 50¢ per bale, including delivery to the ship tackle on our dock. That does not include delivery to the municipal docks in Houston. The 50¢ rate is not an adequate rate for the service we perform and it was placed in our tariff in order to meet the competition of the Cotton Concentration Company of Galveston (R. [fol. 202] 607). There is a cost in delivering to shipside, and whatever it is, is included in our charge to the shipper at 50¢ per bale. I believe there is no other warehouse at Houston, which includes in its handling charge the cost of delivery to shipside; it may be that the Channel Warehouse Co., does, but I do not know. The Cotton Concentration Company, and all other warehouses in Galveston do (R. 608). I am sure in our case that there is included in the charge made by the warehouse or the compress, an amount which represents the cost of delivery by dray or otherwise to the shipside. In the case of the Cotton Concentration Company, or the press in Galveston, whether they make the delivery out of the concentration charge or out of the charge for compression, there is also an element of ex-

pense there for shipside delivery. In the case of delivery to shipside out of the rates for compression at Galveston, the shipper does not actually pay any charge because he receives from the steamship company an allowance which more than covers the cost of compression and drayage combined. It costs him nothing to get his cotton to shipside. (R. 609). I did say that whatever cost there is, is included in the charge against the shipper made by the warehouse to compress, but the compress company has to figure an element of expense for delivery of cotton to shipside in their rate for compression. The shipper pays the charge for compressing at the warehouse. He pays total charge of 72½¢ per bale which is refunded to him by reason of the fact that he delivered his cotton in a high densitied condition. The charge of 25¢ per bale at the interior concentrating place covers the ordinary merchandising service, I think. For that charge, I believe, they unload the cotton, sample it, weigh it, and send samples, and ship it out on the orders, (R. 610) of the shippers. I believe that does not include loading it from the cars and loading it back into the cars. It includes also the use of the Compress premises as a merchandising place. That charge applies [fol. 203] where the cotton has been concentrated or has been moved onto a compress platform prior to the time that it is sold to the merchant who exports it (R. 611). If such cotton incurs an additional charge at Houston, it is because the port concentrator concentrates his cotton at the ports and merchandises it there, and the interior concentrator concentrates at interior compresses, and merchandises it there. The railroads do not participate in that service; and I have not referred to it as a transportation matter. It is a commercial advantage which is enjoyed by the interior merchant or compressor on that proportion of the cotton. I think the rate should not be adjusted so as to place the port concentrator at a more serious disadvantage in that respect than he is at present (R. 612).

Redirect examination:

My impression is that the loading and unloading at the concentration compress plant in the interior is sincluded in the compressing charge, and was included when the rate was raised from 50¢ per bale to its present level. There

was an increase in the allowance for compression at one time, and it was on condition that the service rendered by the compress company in that rate would include unloading it from the cars and loading it back into the cars. The railroad pays that instead of the concentrator. In the case of cotton purchased at an interior point, not a concentration point, the interior concentrator would pay the 25¢ interior concentration charge, and the port concentrator purchasing that cotton would not pay the interior charge, but would *under* undergo the heavier charges at the port. The concentration privilege in the service of transportation that is furnished by the railroads, would be of great value to the interior concentrator in the case of the shipment purchased by him. We do not use that concentration privilege from the railroad at all. We make a direct [fol. 204] shipment and the interior concentrator would make a transit shipment—two local shipments. I do not consider that the interior concentrator is paying anything for that first concentration. As far as the services of the railroad are concerned it goes into the general level of the rate; we pay for it where we do not use it, just as the man that pays it that does use it (R. 614). The longer period of free time granted by the railroads on through export cotton is for the purpose of adjusting the differences in dates so that the shipper will not incur the expense of demurrage if the railroad gets it there before the steamer can take it, or if it cannot be unloaded when it gets there. It is for the purpose of giving the interior shipper for export through transit facility, and making it unnecessary for him to have an organization at the port or a representative there to take physical possession of the cotton, and watch it and unload it and do those things to it which are customarily done on local domestic cotton. The free time is not so great on local bills marked for export. The maximum allowed on that class is twelve days, and on through billing is eighteen (R. 615). The average is ten and fifteen.

The takings for the years ending July 31st, 1923, by the northern mills was 2,403,000 bales of cotton; by the southern mills, 4,389,000. The total movement through the Gulf was 357,344. Some moved all rail, and some moved by New Orleans and water. We don't know what proportion (R. 616). The Houston shippers, according to the figures

which Mr. Douzell has compiled, sold a total of 40,000 out of the total used out of the northern and southern mills. One reason that the concentration charge in the interior points is so much lower than the concentration charge at the ports (R. 617) is because the concentration charge in the interior does not include the cost of unloading the cotton and loading it back into the cars. That is paid out of [fol. 205] the allowance for compression by the railroads. That is the railroads' allowance for compression on cotton which is shipped carriers' privilege of compression in transit. I do not know whether a different charge is applied to cotton which originates at the compress points by the compress company or not. They collect on that also, the charge of 18¢ per 100 lbs. from the railroad company for compression, even if it originates in the town, and the allowance which the railroad makes for compression is taken care of in the lower rate which it charges (R. 618). Where cotton is compressed in transit, and also where it is compressed at point of origin and shipped in a compressed condition, in both cases it is concentrated, and where it originates at the concentration point, the charges for compression are paid in the rate. The compression charge and allowance would be just the same, whether it was concentrated at the interior point or not. Both the shipper who does not avail himself of the compress warehouses in the interior for merchandising purposes, and those who do, pay the same rate for compression. A domestic rate at Houston is essential, because a very large domestic business is done at Houston, that is, dealings (R. 619) between merchants in the ports where the cotton changes ownership; some merchants in Houston who bring cotton in there handle it and re-sell it to merchants at the same place, and there is a very large exchange of business in that way. It is one of the largest markets in the United States.

Recross-examination:

In regard to the cotton traded in in Houston, it finally goes to points intra-state, or foreign. We do not re-merchandise most of the cotton which is handled at the Long Reach plant. We merchandise it. Cotton that we buy in the interior may have been merchandised by a merchant who does not export cotton. We buy it from him and he

ships it to us. We put it in our northside plant or in the [fol. 206] Long Reach plant and merchandise it there, that is, sample it and weigh it and class it, and store it away. We perform that service on all cotton that is handled for our account in the Long Reach plant. Some of that cotton has already had some of that service performed at an interior point. The commodity has already borne the cost before it comes in competition between these two classes of merchants (R. 621). We do not buy, as a general practice, cotton in even running lots in the interior. We buy average grade; just whatever the lot consists of, and that is the way the interior merchant buys it also. Cotton cannot be bought in even running lots as cheaply as it can in average lots. Our competitor in the interior buys exactly as we do in average lots. We do not buy it up like he does, because that is not our method of doing business. We use the method of port concentration; he uses the method of interior concentration. The port concentrator usually has his business at the ports, because the port markets are the largest markets, and he also takes into consideration the fact that a natural concentrating point such as Houston and Galveston are (R. 622), he is able to draw cotton from every side of the state, and draw it into one place, enabling him to do a larger business than he otherwise could do if he concentrates at many places in the interior, since no place in the interior affords enough business at one particular concentrating place to enable a merchant to do a very large business at that one place. It is just a choice between them. One man might use the method of doing business at a very large turn-over and a moderate profit, and another man might use the method of doing business at a smaller turn-over and a greater profit. I did that at Oklahoma City for a long time. I think the volume that is available at a port like Houston or Galveston, or New Orleans, is quite an element in a man's decision to do business at one place or another. As to standing the second concentration charge, it is a choice between people whether [fol. 207] they want to do a very large business at a moderate profit, or whether they (R. 623) want to do a small one at a greater profit.

We buy cotton from the man who buys it from the original producer; we are usually the second buyer. The first

buyer brings it in in small lots from the country points to what you might call a primary concentration point. About 48% of our business last year is cotton that was purchased at interior concentration points. The first buyer brings it into the concentration points or buys it there, and when he sells it to us or to the interior merchant, he sells (624) it free of charge for concentration. He pays the 25¢ which is assessed by the compress company for the merchandising. We consider the interior merchant and ourselves on the same basis even with the man who sells it to the interior merchant, if the man who sells it to the interior merchant has paid the concentrating charge of 25¢, or if he does and if he sells it to us, he has paid that charge. The interior merchant either ships that cotton out just as he bought it to the ports, and concentrate- it there, or he may classify it into even running lots where he bought it and ship it out without any further charge, except perhaps a nominal charge for marking. We must take the same cotton under our system of doing business, and incur that additional charge for the concentration and merchandising facilities at Houston. We have the privilege of doing it the other way if we want to, but we do not choose that way. Our system is based upon the plan of bringing all the cotton we buy into Houston and merchandising it there. I don't think there is any duplication of merchandising service in doing that (R. 625). I would not say that the average merchant in the interior is not qualified to class and grade this cotton for the foreign markets in Europe. Our plan of business is to gather this cotton along with the other 52% which has not been concentrated, into one place, and [fol. 208] re-classify the whole of it there so as to accumulate even running lots more quickly.

Redirect examination:

Each man in the cotton business has to assemble his cotton where he can get it in lots to sell. It may be further classified into even running lots at the same facility and exported or sent to the mill (R. 627). We have to minimize our expense on the 48% in order to compete with other buyers on that. That cotton is weighed, but not tagged as to grades when it comes to us. It is graded by the man who buys it, and he settles with the seller. There

is a tag number which identifies the grade. When we buy cotton in the interior we make no inquiry or difference as to whether it has been concentrated or has not been concentrated. The buyer never ships his cotton to export on the sellers class; it has to be graded by him. He and other cotton merchants employ the most competent classers we can find, men to know the character of cotton our customers want (R. 630). We do not accept the original classing on which to ship our customers under any circumstances. The second concentration is for the benefit of the shipper. If the interior concentrator buys that same cotton from this f. o. b. man, he would go through and grade it himself (R. 630). We cannot rely upon the classing of 30 or 40 people from whom we are buying, none of whom know the necessities and requirements of the foreign trade. The interior concentrator is in the same box in buying from the same man, and he has to go through it and grade it and class it at the same point he ships from.

Taking for illustration 100 bales of cotton that we might buy from the Ross Dry Goods Company at Wills Point, a non-export and non-compress point—the cotton is brought [fol. 209] into the smaller towns and cities and there sold to the local merchant, usually, and brought into Wills Point. The Ross Dry Goods Company calls us on the telephone and tells us he has 100 bales of cotton he wants to sell [fol. 210] (R. 631). We buy that sort of cotton; and about 52% of our business in the interior is bought like that. That 100 bales of cotton is delivered to the railroad by the Ross Dry Goods Company, which takes out a bill of lading to Houston, notify Anderson Clayton & Company. He does not specify whether it is to be compressed in transit or not; it is compressed, I understand, at Terrell by the Railroad Company, loaded back into the cars and finally delivered to us at one of our plants in Houston (R. 632). It is delivered at our Long Reach plant. We are out 80¢ freight charge. The 100 bales are unloaded from the cars, weighed and put on the platform, sampled in the sampling room and classed; each sample has a ticket showing the number corresponding with the tag on the bale. It is classed into grades, which means color and leaf and staple, which means the length of the fibre and the character of the fibre. The grade and staple is put on the sheet with

the corresponding ticket number, and the sheet is taken back to the platform and the grade and staple shown on the sheet is transferred to the remaining portion of the tag on each bale. The 100 bales may be found to be of 20 different grades and staples; it is taken bale by bale into its place in the warehouse and put with other bales of the same quality, grade and staple. It is taken through the high density compress and then put in its respective compartment (R. 633) in the high density press. We have not paid but 80¢ freight, and we do not have the 25¢ interior expense; our expense is 50¢ for merchandising at the port, and 75¢ for compressing. After it is put in its proper place in the warehouse in even running lots, when finally ordered out to shipside it is taken from that point and delivered within reach of the ship tackle. That makes a total expense of putting the cotton to shipside of $5.25 per 500 pound bale (R. 634). Taking the same 100 bales, shipping it to our other plant back from the water front, and putting it on shipboard, the cost is $5.25 per bale, the same cost. [fol. 211] It would be the same price for any merchant that wanted to ship through there. I am treating Anderson Clayton & Company exactly as anybody else. In buying 100 bales of cotton from Sanger in Dallas, we would have the same 80¢ to the Long Reach plant and the same total cost of $5.25 per bale delivered to shipside; we still pay the 50¢ merchandising charge and 75¢ high density compression charge. The man from whom we bought the cotton has paid the interior concentrating charge which had already been incurred (R. 635), so that our purchase from the interior concentrator gets on board for $5.25 per bale and that is true if we ship to our up-town warehouse, to shipside. It is included in the 50¢ rate. If an interior concentrator buys 100 bales at that concentrating point, the cost to him is 83½¢ per 100 lbs. to get it to shipside at Houston; it doe*n's* make any difference whether he ships it into Houston under local bill of lading (R. 636). It makes no difference to the shipper whether it is high densitied or not, except that sometimes he saves a little. It pays in case he ships it down on local bill of lading to Galveston or Houston to the Long Reach plant to high density in transit, it pays the total cost of getting it on shipboard. The 100 bales bought by the interior merchant, who concentrates in

the interior, from the man who has concentrated the same 100 bales at Dallas, bears the rate of 80¢ to the shipside density compress at Houston. He pays 72½¢ for high density compression and delivery to shipside. That makes a total cost of $4.72½ against the cost in our example of $5.25 (R. 637). We have, in our case, merchandised the cotton at the Long Reach plant and paid 50¢ per bale for that service. In the case of the interior concentrator, he has escaped that charge by using facilities in the interior for his merchandising operations. He has paid no interior concentration expense, the seller has paid it in both cases (R. 628). If the interior concentrator buys 100 bales at Wills Point and ships to a concentration point such as Terrell, he would pay 25¢ per bale there for the privilege of merchandising facilities and would ship from Terrell to [fol. 212] the shipside high density compress or sell to a foreign merchant and ship to the Shipside High Density Compress at Galveston, and pay 80¢ on a 500 lb. bale, or $4.00, plus 72½¢ per bale for high density compress, and delivery to ships, making his total cost on board ship $4.97½¢ against our cost on the same cotton, or $5.25 (R. 639). If cotton originates at a point north of Dallas, and is handled by the interior merchant at Dallas, compressed to high density to flat, and then exported direct to shipside, there would be 83½¢ for freight plus the difference between 95¢ and $1.25 for high density, which is 6¢ per 100 lbs., plus 25¢ per bale as a merchandising cost, and that would be $4.72 per bale. The charge of 72½¢ and 50¢ at Galveston for delivery to the ship tackle, is exclusive of wharfage charges in all cases. There are a great many different grades and staples of cotton (R. 640). It is the general practice to standard compress at the concentration point. It may be concentrated at one point and pressed at another. The tariffs of the Railroad Companies will permit concentration privilege in the line of transit even though the concentration be not availed of at the point where the cotton is compressed (R. 641). The railroads absorb the loading and unloading charge at the compression point, but they do not at the concentrating point, when the concentration is done at a point other than the compression points. There is very little cotton that is compressed at one point and concentrated at another point intermediate

to the port (R. 642). If the interior merchant sells the 100 bales to a foreign merchant, and if he concentrates at Galveston or Houston rather than at Terrell, he will be at an expense of 50¢ a bale, rather than 25¢ per bale, and the total expense would be $5.22½¢ in case he does just what we do. We charge 2½¢ more for the high density at Houston than they charge at Galveston. I believe that about 75% of the cotton shipped through the ports of Houston and Galveston is compressed to high density, referring to the export trade. It invariably moves standard in coastwise trade (R. 643).

[fol. 213] WITNESS J. L. WEST

I am Manager of the Transportation Bureau of the Dallas Cotton Exchange, and appear on behalf of the Dallas Cotton Exchange and the Arkansas Cotton Trade Association of Little Rock, Arkansas. I have been in the railroad business about 30 years, and in the transportation end of the cotton business for four and one-half years, or four years. I was with the M. K & T. Railroad when the two rate plan was put into effect on cotton, and I participated in that labor. I was with the M. K. & T. for 30 years and occupied the positions from stenographer to Freight Traffic Manager. During government control, I was Traffic Manager of a group of lines in Texas, about 6500 miles, and was Chairman of the Dallas district Freight Traffic Committee, and then went to the Dallas Cotton Exchange. The membership of the Dallas Cotton Exchange consists of about 100 men who are engaged in the purchase, sale and shipping of cotton. They will handle this year something (R. 644) over one and one-half million bales of cotton. Last year they handled nearly one and one-half million bales. The Arkansas Cotton Trade Assn., consists of dealers in cotton and compresses in Arkansas and there is embraced in its membership, or affiliated with it, the members of the Arkansas Cotton Growers Co-operative Association. I am speaking for them by their authority. The Arkansas people trade almost entirely in Arkansas. The members of the Dallas Cotton Exchange buy cotton in several states, the importance and size of their purchases being in the following order: Texas, Okla-

homa, Arkansas and Louisiana, and states in the southeast. The largest portion of our business is done through the ports of Houston and Galveston. We ship some through New Orleans and a good deal to eastern points all rail.

My Exhibit A-11, consisting of one page, is merely a statement of tariffs which I may refer to, giving I. C. C. numbers (R. 645).

[fol. 214] I am not testifying in behalf of so-called interior merchants against port merchants. Our membership comprises firms who do business on entirely different plans. We have merchants who concentrate in the interior and merchants who concentrate at Houston, and merchants who concentrate at Galveston and some who concentrate at Texas City. We have shippers who concentrate in the interior and re-ship to foreign destination, and to New England on through bills of lading, who do not use, as far as concentration is concerned, any of the seaports. They are satisfied with the concentration of cotton in the interior. Anderson Clayton & Company are members of our exchange, but they are represented by other parties. We complain earnestly that there is a discrimination against some cotton shippers and merchants, and a preference of others in the adjustment of rates in effect to Houston, Galveston and Texas City from points in Texas, Oklahoma, Arkansas and possibly Louisiana (R. 646). That prejudice is against some of our members and in favor of others, and it is in favor of still others as against the rest; it is such that we among ourselves are on an unequal basis, and as a whole we are subjected to the disadvantage and prejudice by reason of the advantage enjoyed by warehouses located at the water side. The whole issue is confused by taking into consideration freight rates to the wharves, or warehouses and compresses, and the cost of the service of those warehouse- and compresses to the shipper. Those are entirely separate and distinct things. We are here to discuss only the propriety of the rates assessed by the railroad (R. 647) and we are complaining of the prejudice and the preference in the adjustment of the freight rates alone. The statement that the cost of delivery of cotton to the shipside at Galveston is 80¢, or that the cost of delivery to shipside *is* Houston is 80¢ is entirely erroneous. The error

grows out of the fact that the compress charge for putting cotton to high density includes delivery to the ship, and the cost of that delivery to the ship is taken into account in fixing the charge for the compress service and is actually paid [fol. 215] by the man who pays for the compressing (R. 648). In these days of pretty close business competition and close figuring it is absurd to say when the high density compress at Galveston agrees to compress and deliver cotton to the ship for 72¢ per bale that they are leaving out of calculation and not charging the shipper the amount it costs them for trucking and delivering the cotton from their presses to shipside (R. 648-9). The representatives of the Galveston High Density Presses testified in the Weatherford Crump case that the actual cost to his concern of delivering the cotton to the shipside was from 12¢ to 18¢ per bale. That cost is lower where the cotton goes to a ship berth at the pier where the high density press is situated. At Galveston the wharves are along at the ship's berth at such places and the cargo must come to them there so that the high density presses pay a higher charge, running as much as 18 and possibly as much as 20¢ a bale, for delivery at their piers than the one on which the compress is located. Mr. Clayton admitted that there is a cost included in his warehousing charge of 50¢ at the Long Reach warehouse at Houston, and that they are not performing that service free of charge for anybody, not even for Anderson, Clayton & Company. We all know that cotton that goes into compresses at Houston and Galveston, which are away from the water front, pay a charge from those warehouses to the shipside. That charge runs from 3¢ to 3½¢ per 100 (R. 649) pounds; somebody pays it. At Houston the cotton is drayed at 3½¢ per 100 lbs. from the up-town presses and warehouses to the water front shipside. The railroads publish in tariffs, which are referred to in Exhibit A-11, a rate of $8.10 for switching from the up-town warehouses and [fol. 216] compresses to the municipal wharves at Houston. That $8.10, however, does not include the loading at the up-town warehouses into the cars, nor does it include the unloading at the docks. The latter charge is 4¢ per bale, so that the cost of a 75 bale car from the up-town warehouse to the dock is about 3¢ per 100 lbs. There are other compresses located on the bayou, by the ship channel, from

which the cotton is drayed down to the turning basin to the ship lying there, at a charge which I understand approximates 3¢ per 100 lbs. Those charges are paid by the owner of the cotton. He has already paid 80¢ from the point of origin, and when he moves his cotton to the ship, he must pay that additional cost. If he employs the railroads to switch it, they charge him $8.10 per car, or he can, after paying their charges, submit a concentration or transit claim in which event the railroads charge the shipside rate. Any cotton which goes into the Long Reach warehouse at Houston pays 80¢ (R. 650) per 100 lbs. There is no charge [fol. 217] for switching or drayage, or there is a charge which Mr. Clayton was unable to estimate, which however, is included in the warehouse expense. According to my knowledge and belief, the cost to the railroads of the service is substantially the same and the value of the service to the shipper who pays for it is no greater in one case than in another. There is another class of discrimination; The cotton merchant who concentrates his cotton in the interior, and, after merchandising it, has it ready to ship to Liverpool or other foreign points, or to New England coastwise, and he employs a through bill of lading. There may be some advantage in the saving of interest in using the through bill, but that is something that has nothing to do with transportation. He is entitled to the through bill of lading, but the railroads charge him for the identical same service that they perform for the Long Reach warehouse at Houston, not 80¢ but 83½¢ per 100 pounds (R. 651). He suffers a disadvantage of 3½¢ per 100 lbs., or approximately 18¢ per bale against what others pay who use the Long Reach warehouse. There is no difference in the service or the value or cost of the service, which justifies that difference of 3½¢ per 100 lbs. I agree with Mr. Clayton that 18¢ per bale is a small amount in comparison with other factors. But it might look pretty large to some other persons. It is 18¢ per bale, and it measures the amount of discrimination in favor of the Long Reach warehouse users against those who ship on through bill of lading, or who concentrate at warehouses and compresses back of the water front at Houston. We know that the Long Reach warehouse has solicited business in the interior, and has stated to cotton merchants that they ought to use the Long Reach

warehouse because they save 18¢ per bale in the rail transportation (R. 652) charges. I do not know whether they have done it or not. I do not offer that situation as constituting a reason for changing the rate, but there must be a reconciliation if rail transportation is to be furnished on even terms to all shippers of cotton enjoying a substantially equal service. It will not take away from Anderson Clayton [fol. 218] & Company any advantages as compared with other people, and it will not give anybody else an advantage over them. It will equalize and put on an even keel all the wharves of the shippers, all the warehouses and compresses, and everybody engaged in the concentration or handling of cotton in Texas and from these other states, so far as railroad transportation is concerned. It will not equalize them as to all the trade conditions, which in my judgment have nothing to do with the case. For a great many years, the rates on cotton from Texas points to the ports for local application and for export or coastwise ship movement were equal. My experience with Texas Railroads dates from 1893. At that time, the Texas Commission, I think, had been in existence about (R. 653) two years or perhaps three. Up to 1910, the Texas Railroad Commission rate was applied to the water front and there was no difference between the export and the intra-state domestic rate. In 1910, the Texas Commission made a reduction in their rate from 55¢ to 51¢ per 100 lbs. The railroads refused to apply the Texas Commission rate to shipside, and held to the 55¢ rate. A terrific pressure was brought to bear upon the railroads by shippers, for the purpose of securing equalization as between the local shipper and the through bill of lading shipper. In that case we had substantially the same situation we are considering here and that was that the through bill of lading shipper had to pay more money than the man who shipped local. The railroads yielded and applied the rate of 51¢ to shipside. That condition continued for several years, and it was in 1917, September 18th, Supplement #6 to S. W. Lines Tariff #43-J, F. A. Leland's I. C. C. #1185, shown on Exhibit A-11, that the railroads [fol. 219] got up courage to charge more to shipside than the Texas Railroad Commission's local rate. I participated in that effort (R. 654). The railroad men at that time wanted to make the rate 60¢ for export because that was

the railroad rate and the Commission's rate at the time the Commission began to cut the rate down, but we could not use the 60¢ rate because we found that the cost then, as now, of the handling of the cotton from the presses and ware-[fol. 220] houses to the shipside limited the amount which we added to the local rate to make the shipside rate, and then we found that difference to be 3¢, now perhaps 3½¢, so we added 3¢ to the Texas Commission local rate to make our shipside rate. Therefore, from 1890 to 1917, the export local rates from points in Texas to the ports were equal except for a very short period in 1910. There was no objection to the correction in 1917, because it did not make any difference, since nobody was located at the waterside who could enjoy the local rate without an expense for delivery to the ship. That was the situation when the Weatherford case was tried (R. 655). But this year a large and powerful firm decided to locate a warehouse on the waterside where the ships would and could come and take the cotton right out of the warehouse. That injected a brand new factor into the situation, and made it necessary for us to take some action in reference to the discrimination and that is why we are here. One solution of this situation would be for the two commissions to designate the compresses and warehouses at these ports to which the domestic rate of 80¢ should apply, and the presses and warehouses which they consider are so situated that the export rate should apply. I think that plan, however, is impracticable for the reason that there is such a fine distinction between some of these places as to their location, that it would be difficult, if not entirely impossible to say that one is entitled to a local rate and the other to the export rate. There will be other warehouses and other compresses erected, and the case might have to be reopened every time, in order to determine the status of the new warehouse (R. 657). The other plan is to apply one rate for local and for shipside or for coastwise movement. If that is done, there should also be a slight modification of the present transit rules at the ports which would permit the railroads to absorb the cost of drayage not to exceed 18¢ per bale from the warehouse to the shipside. I suggest that so that the railroads may not be called upon in all cases to switch the cotton. That is a service which is extremely expensive to the railroads, as

well as from the standpoint of the shipper, and it is al-
[fol. 221] together wasteful. I am sure the railroads would prefer to absorb not more than 18¢ per bale rather than be compelled to switch the cotton. That arrangement will put everybody at the port on an absolutely equal basis, and the traffic will not be called on to bear one cent of additional charges or expense, and there can be no complaint of discrimination or preference. The shipper would pay 83½¢ from Texas common points when his cotton is delivered, no matter whether it is delivered in Houston, Galveston, or Texas City. When that cotton is ready to go to shipside, it will be sent either by switching or by dray and the shipper will present a claim supported by his expense bills and his receipt for the actual amount of (R. 657) cost incurred by him for that second movement to the shipside. The limit of that would be 18¢ per bale; I don't see any objection to its being 20¢, but I think 18¢ per bale would be sufficient. It seems to me that that would leave the Long Reach warehouse in exactly the same position with all the rest of the people. If the concentrators were able to show that it cost them 1¢ to 2¢ per 100 lbs., say 5, 10 or 15 cents a bale, the actual cost which they pay either through the item of warehousing or merchandising charge, or by handling it themselves, or by employing contractors to do so, they would receive the benefit of that providing it didn't exceed 18¢ per bale and they would be on an equality with all the rest of them and not suffer any disadvantage. I have no complaint as to the fairnes or justness of the present rate. In selecting this one rate, we did not wish to urge the selection of either the 80¢ or the 83½¢ rate; that is immaterial, because everybody would have to pay it. But for the general welfare of the railroads in this part of the country, we do not think it is advisable that any reduction [fol. 222] of revenues result from these operations (R. 659), if it can be arranged so the railroads' revenues will not be reduced, and so we will not have to pay any more money and that in my opinion is the ideal way to fix it. In other words, in adjusting this matter for Texas, use the present rate of 83½ cents per 100 pounds. I am not proposing anything as to the rate, but what I state is a situation which would be satisfactory to us and that would not result in imposing upon the traffic one cent of additional burden, be-

cause the traffic is paying substantially or almost exactly 83½ cents from Texas to shipside today. It pays 80 cents first and then pays 3½ cents afterwards. There is not a bale of cotton from Texas to shipside, Houston, Galveston, Texas City, and there has not been for years, that pays less than 83 cents, in some cases it may not be quite 83½ cents. I should have made an exception of the cotton that goes through the Anderson-Clayton Warehouse, of course, that is what we are kicking about—it does. I mean as to these other places. The cotton we complain of goes through the Anderson Clayton facilities for 80¢ and we propose to increase the rates on that from 80¢ to 83½¢. That would not involve an increase in the rates on cotton; it would not raise the cost of putting the cotton on board the ship. It would raise the first charge paid to the first railroad from 80¢ to 83½¢, but it would eventually get on the ship at a railroad charge of 83½¢ just as it would if it went through any other warehouse. The railroad would receive the benefit of that 3½¢ on cotton moving through the Anderson Clayton facilities, less whatever the shipper could prove to be the cost to him from Anderson Clayton warehouse to [fol. 223] shipside (R. 661). It would reduce the charges borne by the traffic if you adopt it as the one rate 80¢ instead of 83½¢, and I would not object to that except from a broader viewpoint. We like reductions but I don't think the producers would gain sufficient benefit from a reduction of rate in the traffic of 3.5¢ a hundred pounds to warrant the Commission in doing that. The absorption of the 18¢ per bale drayage charges, would be an absorption of an amount slightly more than the switching charge, but the railroad on the other hand would not be called upon to perform any service. In answer to when you s art to absorbing more than the railroad charges you are not starting to equalize commercial conditions or location of plants, I want to say that what I have suggested has been in effect in Galveston for many years and is in effect today. *What I have suggested has been in effect in Galveston for many years, and is in effect today.* It has not been in effect in Houston, but I do not see why it cannot be done in Houston without damage. I do not think that it is an equalization of commercial conditions of itself. The amount involved is so small as to be entirely negligible; it is limited. I

would not advocate an absorption of cost regardless of the amount. I would fix a minimum within which I believe all of the cotton from the warehouses at Houston, Galveston, and Texas City, can be moved to the water front. That has been in the railroads' tariff since 1910, but the railroads have never been called upon to refund it because the shipper is about even without adding in a claim (R. 663). It costs the shipper about 3½¢ to move the cotton when he ships it in on the local rate, so there isn't any necessity for using the refund.

I do not see that that plan would be equalizing locations [fol. 224] or commercial conditions (R. 664). It is my opinion that you could not require the railroads to absorb charges that are not railroad charges but I think they would do if it were suggested by the Commission. I will take my chances on that. I do not think that charges are being assessed equally at Houston. The rate from north Texas to Houston is 80¢ per 100 lbs. fixed by the railroad commission of Texas; the switching rate from the ware-[fol. 225] houses where the 80¢ rate applies, is $8.10 a car to the docks; that rate was fixed by the Railroad Commission of Texas and filed with the Interstate Commerce Commission. These two rates added make less than the carriers' published rate to shipside, giving Houston that much less in disregard of the provision against the through rate exceeding the sum of the intermediates. That is not very important but I think it is a bad adjustment.

There is another application which I think is illegal. Where you find two bales of cotton lying side by side at the Long Reach warehouse, (R. 665), both from exactly the same point of origin but forwarded by different shippers. One is sold while in the warehouse to a cotton merchant at Houston, and he takes possession of it. The ownership of the other bale is retained by the man who forwarded it from the interior, with the purpose of forwarding it on to Liverpool, and it is forwarded on to Liverpool without changing ownership. It moves from point of origin to destination, and is subject to the railroad charges of 80¢ instead of the published rate of 83½¢. I do not blame the railroads for that, for they could not distinguish between the two bales, but that is an additional reason why my plan should be adopted to place those two bales on an equality, and I do

not see how you can get them on an equality in any other way (R. 666). The Texas Railroad Commission rates should be the same as the inter-state rates. If there is any difference in the demurrage rules in favor of the through shipper, I think we had better get them together (R. 667). When the 83½¢ rate is charged, the traffic is subject to regulations on interstate or export traffic, and the demurrage rates provided on that traffic apply. If the traffic pays 80¢, it is then presumably intra-state, but if you follow it a little while, you will find it is actually inter-state, or export. It seems to me that there is not the same necessity for the Texas Railroad Commission to make demurrage rates on through bills of lading as there is for the Railroads [fol. 226] to do it, because the rates of the Texas Commission do not apply on through bill of lading stuff. They apply on traffic for local delivery. If the traffic does not take the inter-state or export rates, the intrastate demurrage rules apply, and we sometimes have to pay them (R. 668). My testimony applies with equal force to the High Density Compress Company at Galveston, as to the Anderson Clayton's Long Reach plant at Houston. The situation is not the same for the Long Reach plant at Houston delivers cotton to shipside at the charge which it makes for its warehousing, the cost of which Mr. Clayton was unable to state. At the high density presses in Galveston on the other hand, we know what the cost is because it is a matter of record. The high density presses take cotton shipped into Galveston on a local rate of 80¢ and deliver it to the sihpside for the high density charges. They are fooling themselves (R. 669) and everybody else in making a lump charge for their services, concealing the fact that they are making an actual charge for delivery to the ship. The high density compresses in other places similarly situated ought to reduce their charge for high density service by the amount of the cost of draying cotton from the press to shipside and they would if this proposition went through. If the shipper proposes to a high density press to have 50,000 bales of cotton pressed at a charge of 54½¢, the shipper to handle the cotton from the compress to the dock, the compress would do it. The charge for delivery to shipside is there, and the shippers are paying for it, and there is some at Long Reach warehouse. Mr. Clayton says so—he

doesn't know how much (R. 670). In my experience as a railroad man, we were confronted for a good many years with the representations of shippers and Steamship Lines [fol. 227] that they were not given a fair amount of free time on through shipments, and I think they were right. It is necessary from the standpoint of the actual physical handling of traffic that there be longer free time on traffic going through from railroad to ship than on traffic for destination at a local place in the port. That is true because of the uncertainty of the arrival and departure of ships, and of the arrival and delivery of the cotton by the rail carrier, with regard to the water carriers schedule. The interchange of traffic between water and rail carriers involves contingencies that ought to be taken care of by a larger allowance in free time. The only reason for the difference is that the connection between rail and water carriers is uncertain and a little more leeway is necessary. The consignee of a local shipment (R. 671) is not hampered by the uncertainty of the arrival of a ship. He has his plant there and forty-eight hours has been considered sufficient time to unload it. There was confusion for years about the demurrage rules, and about 1914 or 1915, I think the Interstate Commerce Commission sent a representative to Galveston who stayed there for about a year, and worked out a solution, which the Commission suggested to the railroad, and that is the plan that is in effect today. I think that on the grain export movement from Texas, the same rates are applied whether for export or domestic; and on export grain there is 10 days free time as against two days free time on domestic grain (R. 672). I think the present free time allowance on export cotton was fixed by the Commission after years of investigation, and it was fixed before the rates were made for export, I think about two or three years before. I do not think that the demurrage rule or demurrage rates, have anything to do with the reasonableness of the rate. In fixing switching charges, [fol. 228] the railroads do not consider the cost of service, because nobody knows what they are. It is almost impossible to determine them. The General Manager of the Burlington while we were discussing the switching cost in St. Louis in the joint yards between the Burlington and the Katy, told me at one time that the cost was $1.70 and the next time $17.80.

WITNESS F. R. DALZELL

I am Traffic Manager of the Houston Cotton Exchange, where I have been about three years. Prior to that I was with the Santa Fe in the Traffic Department in various capacities for about 15 or 16 years. (Mr. Scott: We will admit Mr. Dalzell's Traffic experience.) The Texas intra-state rate is the basis for the inter-state adjustment. The Texas intra-state rate, when made and at all times since, has contemplated the service of concentration. It provided that cotton may be concentrated between the point of origin and destination without charge. When the rates were made, the service of concentration was a necessary service, and was employed virtually in 100% of the movements. In recent years, the concentration of cotton at the port has grown to some extent. It does not necessitate any interior concentration. When the port concentrator buys cotton in the interior, that has been concentrated, it is merely because he finds the cotton at the concentrating point. It has not been brought there on his account or by him or to any desire or convenience to him. It is there simply because someone else got to the cotton first. The concentration that took place in the interior on cotton that is bought by the port concentrator is of no value to the port [fol. 229] concentrator while the interior concentrator finds it a valuable and a necessary service. The port concentrator does not require it in his business, nevertheless they both pay the same rate on intra-state shipments and inter-state shipments, that is, the shipside is predicated upon the Texas rate. That means that the port concentrator is paying for the interior service that is performed (R. 675) by the railroads in concentration and he does not use it. Mr. West has correctly stated that the present arrangement of 83½¢ to shipside against 80¢ for the Texas intra-state rate was not made with the specific intent of creating an equalization between the two; it was born- simply because of the fact that the railroads felt that they ought to have more money on the inter-state traffic, that is, shipside traffic. The original plan was to come to the rate of 60¢ which was 9¢ higher than the then Texas Commission rate, but that was found impracticable because the shipper could then put his cotton into a plant located at Galveston, and get it out of there for an average dray cost of 3¢ per 100 pounds,

and by that method he beat the through rate that they thought they ought to have. Therefore, the railroads took a difference of 3¢, not because they thought that was sufficient, but because that was all they thought they could get as a practical matter.

I think that high density compression was started at Galveston about 1914 (R. 676). The difference in the two rates of 3¢ did create a practical equalization, but because the railroads had to limit themselves in that way and not because they tried to equalize. The concentrator in the interior at that time, had to pay the cost of loading and unloading his cotton because the railroads did not include the cost of loading and unloading cotton at concentrating [fol. 230] and compressing points in the compress allowance. At Galveston, things have changed since that time; when the present rate allowed interior compresses was put to 20¢ per 100 lbs., about the Fall of 1918, it was provided in conjunction with the increased allowance that was made to the presses, that the allowance would also include payment to the presses for the service of loading cotton and the topping of it. That destroyed the equalization that had existed before, because while the interior concentrator was (R. 677) relieved by that of the necessity of paying for his loading, the concentrator at the port was not so relieved. He still had a drayage expense that was equivalent to the difference between the domestic rate and the shipside rate, and in addition, he had a loading expense that the interior concentrator did not have so that for five years at least we have not had equalization. We insist that there are two radically different classes of traffic before us. One might be called raw material, cotton in a package that is not fit to be exported. Cotton that must go through the process of being prepared for export, but we claim that there is no difficulty in distinguishing between the two, and we think it would be wrong to mix them up under one rate. On the other hand, we think we have two classes of freight; one a raw material coming into manufacturing plant, which is practically intra-state traffic; and that traffic is of such a nature that it is not in condition to be exported until after it has gone through this process. It then for the first time becomes a commodity that is in shape to be exported and there is no such great similarity between the two that the problem can be solved only by

making one rate (R. 678). We think the question of whether a shipper is able to induce a ship agent to send a ship to [fol. 231] his dock is a very poor test for determining what rates should be used. The test of the difference between the two is much more certain than anything of that sort. We think that the present intra-state rate is high enough and should not be advanced; for one reason, because when it was originally made it contemplated the inclusion of the expense to the railroads of concentrating in the interior, and it did have to bear that expense. The port concentrator created a through movement from the interior to the port without that expense to the railroads, and the present intra-state rate no longer involves an expense in view when the rate was made. That concentration service extended by the railroad is a service of value to the shipper (R. 679). We believe that the Texas intra-state rate should not be advanced, and I offer an exhibit to show that in fact it is too high.

(Exam. Keeler: It seems to me that we are getting out of the scope of investigation when we are going into the matter of the level of the rates to the ports.

The Witness: I am offering this exhibit to combat the suggestion that was made here that the rate—particularly the intrastate rate be increased 3½ cents.

Exam. Keeler: But our proposition here hasn't anything to do with the level of the rate. The proposition is this: Is there any different circumstances and conditions or services which justify a higher rate on traffic going on through bills of lading to port and then going on through, and traffic which is going to the port on local bills of lading, and is exported, and traffic which is going to these different up-town concentration points. The question is simply as to whether there is any difference between the conditions which justify a higher rate on that traffic and there [fol. 232] isn't any issue as I can see with regard to the level of the rate.

Mr. Fulbright: In that connection, while we are not trying to attack the level of the rate in this proceeding, I wish to call your attention to the notice sent out which stated one of the questions to be determined was whether any change should be made in existing rate in order to avoid and remove such undue preference if any, that may result in favor of

one of such shippers, or against other shippers, or localities, or against any other shippers in other localities.

Exam. Keeler: Yes that is the way the notice reads, but I don't consider it as bringing into issue the matter of the level of the rates. If you are going to take this question up, you have also got to take up the question whether the 83½ cent rate on export traffic is too high which brings in the level of both rates. The question before us is not in regard to the level of rate, but merely the matter of relationship of rates on the different classes of traffic.

Mr. Fulbright: It is my purpose to next take up the shipside rate and by showing that it involves a great deal more service than the intrastate rate, show that it should be higher.

Exam. Keeler: That is perfectly all right and proper, but I do hesitate to go into this question of the level of the rate in this proceeding. What is your view, Mr. Chairman?

Commissioner Gilmore: Mr. Examiner, in view — the suggestion of Mr. West that the rates be made the same, I can see no harm at least in permitting this exhibit to go in. I concur however, in your view that the level of the rates [fol. 233] intrastate are really not involved in this proceeding.

Exam. Keeler: And this adjustment should be made putting into effect one rate—it doesn't necessarily mean that the Commission must recommend a specific rate but merely establish a —parative rate or spread between the two rates and the matter involved here does not bring into issue the question of the level of the rates.

Mr. Fulbright: Of course if that is the ruling these exhibits would not be properly put in evidence and would have to be withdrawn.

Examiner Keeler: The ruling is that this exhibit A-12 will not be considered in evidence.

Exhibit A-12 is a reproduction of a letter dated October 19th, 1923, written by the director of the port at Houston, showing the wharf assignment to the various steamships that serve the port of Houston. They must take business at these wharves that are so assigned to them. They are free to move about as they please, but this is their home wharf and any shipper in Houston has the right to and as a matter of practice does deliver freight to them at this

assigned wharf (R. 683). The Steamship Line must pick it up there.

I compiled the exhibit introduced by Mr. Womack, showing switching charges from the respective warehouses. I will furnish the tariff authorities for it, if the Commission desires (R. 684).

The first item on Exhibit #10 is Exporters' Compress & Warehouse Company, served by the Southern Pacific and the charge to the wharves, 2, 3, and 4, served by the I. & G. N. and the Houston Belt Terminal Company, is $14.40 a car; that is, joint line charges, which is made by adding the charge of each line. The Southern Pacific charge is $8.10 and the I. & G. N. charge is $8.10. The two tariffs [fol. 234] referred to in Exhibit A-11 would make $16.20 for that service in that particular spot, but I have shown the charge of $14.40, it being $8.10 for the Southern Pacific and $6.30 for the Houston Belt & Terminal Company, which can perform the service in connection with the Southern Pacific.

When we started the exporting business in Houston, we had no facility for getting to compress and to the ship except the box car. The switching facilities were inadequate and we were tying up equipment there that was needed for bringing cotton into Houston and shipping it out by rail to other ports, so we immediately tried to utilize the Shallow Draft Bayou. After about a year of effort, we got one man to risk establishing a barge line. He started about September, 1922 with three or four barges, and in a very short (R. 686) time after he started, it became perfectly plain to all of us that the barge was going to be a most valuable auxiliary to our property. The pioneer did not have enough equipment and was not making money on his investment. The cotton exporters of Houston organized a company, I think is capitalized at about $50,000.00, and took over the first barge line and added to it, and I think they are now running eight barges with two tow boats. It is not certain now whether that was a good or a bad investment, but it is a most valuable and efficient auxiliary to our port. A majority of the cotton exporters of Houston are stockholders in it; but I believe that Anderson Clayton & Company are not among the stockholders (R. 687).

I believe that the present inter-state rate might be higher

than it is. It includes more miles of transportation than the intrastate rate. It includes also the expense to the carriers of the service of concentration for which service [fol. 235] the railroads get nothing. In my opinion, one very necessary thing to bring about any sort of equalization is to provide for a charge for the interior concentration. We recommend 5¢ per 100 lbs. as being in our opinion perhaps adequate remuneration for the service the railroads perform. (Objection was made to this testimony on the grounds that an extra charge for interior concentration [fol. 236] was not involved, which objection was sustained by Examiner Keeler) (R. 688). (Esaminer Keeler: The ruling is that ou may show that a concentration service is performed without attempting to go into all the details and say what the level of the concentration charge is) (R. 696).

The privilege of interior concentration involves considerable extra service on the part of the railroads.. The through rate is applied on what is in every sense (R. 697) two complete and separate shipments; the cotton comes into the concentration point, and the Railroads perform a switching service, make a complete delivery, makes a freight bill, collects the charges, and goes through all the details incident to the terminal delivery of any shipment of freight. Subsequently there is again the full detail of a separate shipment in and on the movement out, which adds to the expense to the receipt of any shipment is gone through a second time. There is also the probable expense of switching. That shipment has been taken on to its final destination, and once more a complete delivery with all of its incidental expenses is made, and the shipper makes a claim thereafter and that claim entails a considerable amount of work for the railroad to perform and a certain amount of work in clerk hire and checking etc. The shipment must be followed back to determine in many instances that there has not been a previous shipment, and the checking of concentration claims requires the service of a specialist in the railroad's general office (R. 698). When the cotton is compressed in transit at the concentration point, there is not the service and the expense of the claim, there is not the making of two additional sets of documents, such as the freight bill and the collecting of money on the inbound shipments, and making the second bill of lading and weigh bill on the second

shipment. There may be the expense of switching into the press and out. The person availing himself of this interior [fol. 237] concentration is able to perform his merchandising services at that point, and it is a service of value to the shipper. The cotton going out on the concentration would not be the same bales as that which came in on the documents that are coupled up with the outbound documents to form a through shipment. There is also in the concentration of cotton, an item of car detention, both on the movement in and on the movement out, which adds to the expense of the carrier (R. 699).

The existing difference between the domestic rate and the shipside rate is not as great as it should be. The drayage absorption amounts to 13¢ at Houston and 22¢ at Galveston. The 22¢ absorption at Galveston, wherever it is actually made by the railroads, results in the railroads paying back to the shipper a fraction over 4¢ per 100 lbs. That absorption would not be made unless the shipper had paid 22¢ per bale dray-ge (R. 700). The effect of an absorption of 4¢ per 100 lbs. at the port would be to reduce the carrier's revenue on shipside consignments to 79½¢ per 100 pounds even less than they earn on local delivery. The drayage absorption at Houston is 13¢ per bale. The minimum charge for drayage at Houston is 18¢ per bale in addition to which there is a cost for loading on the dray of 10¢ per bale (R. 701). With the exception of the Houston Compress Company, the compresses at Houston do not absorb in their compression charge the cost of drayage to the waterside. The allowance at Galveston is in Item 65, Supplement 16, Texas Lines Tariff #29, Fonda's I. C. C. 79 (R. 702).

To apply one rate that would be the shipside rate and be applied to all concentrators, whether they do business near the front, or at the front or back from the front, and allow a refund of the cost of drayage to the shipside by the railroads who rehandled it to the shipside, is not at all practical. It has the effect of placing a premium on a badly located [fol. 238] warehouse and penalizing the large investment that is entailed in a properly located warehouse. Secondly, it will result in unequal revenue to the railroads for the same service to the same town on the same class of freight; everybody would pay 83½¢ to Houston, and the railroads

would be called on to refund the amount that it cost at each press to get that cotton from press to ship. That amount would be least at the best located press, and it would be greatest at the press that is suffering the poorest location; in any event the railroad revenue in no two instances would be the same although the service of the carriers would be the same and the commodities the same; thirdly, it would penalize us at Houston for a second concentration of cotton when, as a matter of fact, so far as we are concerned, it would be a first concentration, because the concentration in the interior (R. 703) was not performed for our account and we get no benefit from it; fourthly, it would result in endless controversies between the railroads and the various shippers at the ports. Each shipper would believe that he was not getting enough refund and that some other railroad was treating some other shipper more liberally. There would also be a controversy between the shippers at one point and the shippers at another point. It would be impossible to get anything like uniformity in the prices that would be charged by the various facilities that were used in getting cotton from warehouse to ship. At Houston we have drays, switch cars (R. 704), and we have a barge. The bulk of the switching is done by two railroads, the I. & G. N. and the Southern Pacific, and a larger quantity of cotton comes into Houston by railroad other than those two, which are dependent on the I. & G. N. and the Southern Pacific for the service of switching to compress. The roads [fol. 239] which have the other lines at their mercy, would constantly raise their switching charges. The Barge lines are owned by the exporters, and it has not yet been determined whether or not they are making a profit on the investment; while the business is at its peak and all the barges occupied they are doubtless showing a profit but for five or six months at a time there is no cotton and the investment lies idle; I can see in this refunding plan endless controversy between the owners of that barge line and the railroads, as to what the barge is entitled to, and there is [fol. 240] serious danger there on the question of rebate being brought into prominence (R. 705). The dray is quite beyond the control of the carriers or of any of the regulating bodies, and at the present time is operating from only two or three presses; the other exporters and presses are

entitled to the benefit of dray service, and under any equalization plan should be able to use that valuable facility and get a refund of what it cost them. Mr. Womack's exhibit A-10 shows that each press has several ways of getting to the different docks; some more convenient today and some more convenient tomorrow (R. 706). Many presses have two ways of switching to the docks. Sometimes they want to use the one that will cost $8.10, and at other times they may find it necessary to use the one that will cost them $14.40. If we start to have real equalization, the only way to do that will be to let the shipper bring in his receipt showing how much he paid to get to the ship, and pay it without any question. I think that is the only difficulty which would arise in connection with the suggestion that the carriers should absorb an amount equal to their switching charges. My fifth reason for opposing this suggested equalization plan is that the interior concentrator who goes to the ship on a through export bill of lading or a local export bill of lading would be going to the ship under a demurrage rule that would give him a rather extended free use of that car as storage space. Our concentrator in Houston would (R. 707) have to provide his own storage. The interior concentrator would have 18 days free time, whereas the Houston concentrator using the barge line under a refunding basis, would get no refund for the amount it cost him to store that cotton in Houston, for an equivalent period of 18 days. Even if the man at Houston used a switch car under the refunding basis, he would then have some free use of that car at the warehouse, but only to the extent of 48 hours, after which time he would pay a very high rate of demurrage. Port demurrage rule (R. 708) gives the shipment 10 days free time; the average rule provides in substance that [fol. 241] there will be no closure of the records on one car, and that instead the matter of demurrage will be treated by using the one month as a unit. The business for a month is taken and all of the cars that have come in during that period are used to arrive at an average, so that a car may come in and take 40 days, but if there had been enough other cars unloaded in one day, thereby earning a credit of ten days free time, that credit is applied against the car that remains 40 days, and wipes out the penalty that otherwise would be assessed. In connection with the aver-

age rule, it is provided that 18 days free time will be the maximum on any car without penalty. It applies at a wharf or warehouse; it takes into consideration everybody's freight of any character coming to a particular wharf or warehouse. The average rule is not confined to the business of one shipper; it takes into consideration everybody's freight of any character (R. 709). I do not mean that any car may have 40 days free time under the tariff; the maximum is 18 days.

The suggestion about equalization and this refunding feature, is predicated, I believe, on no charge being made against us for a second concentration. That, we believe, is wrong. We believe that a charge should be made for second concentration. It is an expensive service to the railroad and should be paid for. Houston is in a sense also an interior point, in that we ship great (R. 710) quantities of our cotton through the port at Galveston, and as I understood Mr. Griffin, his thought was that we should be charged for the second concentration. That is a hopeless inequality that makes the whole suggestion valueless. If we get second concentration free of charge it naturally would give the interior a second concentration free of charge also. A second concentration in the interior free of charge would only [fol. 242] serve to aggravate the situation that exists there now.

Exhibit A-13 is offered to show that there is performed for the interior concentrator additional service which is not used by the port concentrator, and is directed to Mr. West's testimony that the railroads (R. 711) perform iden- [fol. 243] tically the same service for the 80¢ local rate as they perform under the 83½¢ shipside rate. The port concentrator does not use any indirect service; his business is based upon getting his cotton from the point at which he finds it to the port by the most direct and quickest route, and he has no use whatever for indirect service. All cotton (R. 712) from the state of Texas, going through the ports must pass through Houston and through Galveston. The interior concentration is limited to a very small territory, naturally tributary to him, and in order to do any amount of concentrating business in the interior, it is necessary for each interior concentration plant to bring cotton from a territory which is not geographically tributary to

it. Therefore, at every interior concentration plant, there is a substantial amount of the territory from which it draws cotton which involves indirect and unnecessary service on the part of the railroads. This exhibit illustrates the extent to which the railroads are performing and must perform indirect and out of line service, which, so far as we are concerned, is unnecessary (R. 713). It would be performed whether the bill of lading was a through export bill of lading, or a local bill of lading. This service, including the backhaul, is performed alike for cotton that moves to port on local intra-state, and on through interstate bill of lading (R. 714). I wish to correct my testimony. I understood the question to be whether there would be any difference whether the bill of lading was a through export or export bill of lading to the port. I will answer that question in the negative. The services detailed in this exhibit, and published in the tariffs of the carriers are confined, with one exception, to the traffic destined to interstate or foreign ports. The rules would not be applicable on a shipment that moved to the port as an intra-state shipment (R. 715).

(The exhibit was objected to on the grounds that it was extraneous to this proceeding, and was admitted in evidence with the following statement by Examiner Keeler: [fol. 244] This Exhibit will be received for what it is worth, but there is considerable doubt in my mind as to whether or not this matter of interior concentrators, or interior merchants, versus port merchants is involved in this case, and it is understood that that question is to be finally determined. Personally I do not think the scope of investigation contemplated that, but we will let it go in and it will be for the two commissions to determine whether it is an issue.)

The last four pages of the Exhibit are not taken from the railroad tariff. Pages 29 to 32 inclusive portray the situation with respect to indirect and extra service performed in the concentration of cotton at Dallas. It is taken from a pamphlet issued by Mr. West of the Dallas Cotton Exchange (R. 720).

On page 6, Item 140 of the Santa Fe Publication, which covers this service, provides that cotton coming from Pendleton, Texas, may be concentrated at Cleburne, and re-

shipped to Houston or Galveston, and destined to interstate or foreign destination without extra charge for the additional service. The effect of that rule is while the (R. 721) distance from Pendleton to Houston via the direct line of the Santa Fe is 220 miles, the cotton is moved up to Cleburne for concentration, and then back, which means a total service of 404 miles.

The preservation of the existing difference between the local and shipside rates was the subject of a conference held among the members of the Houston Cotton Exchange. It was widely advertised (R. 722) and freely discussed. It was even the subject of a special meeting of the board of Directors and everyone who had any ideas on the subject, or any interest, was invited to be present and express his views. Anderson Clayton & Company had no representative there, nor did the Houston Compress Company. The position taken at that conference was substantially the position announced in this proceeding.

[fol. 245] The charge for the warehousing and concentration service at the various Houston Compresses is generally about 50¢ per bale. I know of no instance where it is less than 50¢ (R. 723). In some of the tariffs, the service is broken up and stated separately. I know of no instances other than in the case of the Houston Compress Company where the charge for the concentration service includes the cost of delivery to shipside.

The difference in the rate of cotton coming to ports for concentration as against the rates to shipside is not a novel situation or one that is confined to Houston and Galveston. It exists everywhere that cotton is handled at a port. Glenn's Cotton Tariff #3, I. C. C.-a 370, page 48, Items 1 and 2, show a spread of 5¢ between the rate for local delivery to presses and warehouses in the City as against the shipside rate at the following ports: (R. 724) Norfolk, Va., Wilmington, N. C., Charleston, S. C., Savannah, Ga., Brunswick, Ga., Pensacola, Fla., Jacksonville, Fla., Mobile, Ala., Gulfport, Miss., and New Orleans, Louisiana. The practice is nation wide.

Mr. Clayton: There has been shipside compresses and (R. 725) warehouses at Wilmington, N. C., for about 15 years to my knowledge. It is a very important port for cotton. I do not know that all other conditions are idea-

tical with those ports at Houston and Galveston, but you cannot regulate a matter of this sort at a port in one state without considering the effect upon other ports in competition with it. The cotton which moves to Europe through Wilmington, N. C., comes just as much in competition in those markets with the cotton which moves through Houston and Galveston. Arkansas cotton moves through the south Atlantic ports, and some Oklahoma cotton does (R. 726). No Texas cotton that I know of does. That does not change the fact that the cotton which moves through South Atlantic Ports comes in competition with the Texas crop.

[fol. 246] The Witness: There is a uniform difference at all of these ports between export and domestic rates, of 5¢. The export rate is higher than the domestic rate. The Glenn Tariff applies on cotton from practically all territory east of the Mississippi River (R. 727). This item provides that 5¢ will make delivery at the south Atlantic ports. The wharfage charges are added at Galveston, making 5½¢ (R. 728).

Cross-examination:

Houston is a concentrating point for cotton, from the shippers' viewpoint, but we do not do that concentrating under railroad rules; we pay for it ourselves. We draw cotton from various points in Texas, Oklahoma and Arkansas, take it into our warehouses, compress it there, and afterwards reship it to points in southeastern states or New Orleans to a small extent (R. 729). That is done under the Transit Tariff. The concentrating arrangements in the interior of Texas and at Houston have been in effect as long as I can remember; they were in effect when I went into the business, and are today. We attacked the same situation in the proceeding before the Texas Railroad Commission on September 4th of this year; prior to that I do not know of any proceeding attacking those arrangements (R. 730). They are available to anybody. I think I am fairly familiar with the switching charges authorized by the Railroad Commission of Texas applying at Houston. The maximum switching charge on intra-state traffic is $3.45, I think the minimum is about $2.00; it may be $1.80. The charge of the I. & G. N. Railroad for intra-state switching is $8.10 a car (R. 731). The charge of the Southern

Pacific Railroad switching to Clinton on intra-state traffic is $8.10 per car. There is a completely different character of service involved in inbound hauls on the $1.80 charge from that performed on the $8.10 rate. The $8.10 is in fact a freight rate; the $1.80 charge is a sort of reciprocal arrangement between the railroads. Railroad A switches a car for Railroad B and charges $1.80. Next day the process is reversed and *and* railroad B charges Railroad A [fol. 247] $1.80. In the course of the year it probably evens up (R. 732). Switching rates are not made with any regard for destination. They are a crude method for getting a shipment from one place to another, which perhaps are not entirely equitable to everybody at all times, but they present the same inconsistencies in hundreds of situations as is this situation of the Clinton Press vs. the Press which involves a switching of one mile. At present the 80¢ Texas Common Point rate applies alike to all warehouses in Houston, whether they are one mile from the railroad connection or ten miles. It cost the concentrator at Houston 10¢ per bale to truck a load of cotton onto the dray at Houston (R. 733). We have taken up with the carriers the question of changing the drayage absorption at Houston, but it has not been acted on. The interstate transit concentration arrangements in Texas are substantially the same as those prescribed by the Railroad Commission of Texas for application on intrastate traffic. It is true that the shipside and local rates were the same from 1891 to 1917, with the single exception of the period in 1910 when the Railroad Commission reduced local rates and the Railroads for a short period, declined to apply those local rates to the shipside.

During that period, there was no cotton exported at Houston, and the situation so far as I know at Galveston was satisfactory. The objections I gave to the suggestion were all made to the Houston situation. It might be that the plan would work at Galveston. The first export cotton went out of Houston in the Fall of 1919. Houston was never a cotton (R. 735) export port where cotton could reach the ship without the intervention of the railroads, until the Fall of 1919.

[fol. 248] We are advocating the propriety of the assessment of a charge for initial concentration. The service of

concentration entails expense to the railroad and is of value to the shipper and should be paid for by the concentrator. The plane of the rates being out of this discussion I could not make and do not make any suggestion about how that should be arranged. I do not make any suggestion about how that should be arranged. (R. 736.)

Mr. Giessow: In other words I take your position is that the plane of the rates including the privilege of first concentration should be higher than the plane of the rates without concentration?

Mr. West: It seems to me like that we are getting back into the situation that has been eliminated.

Com. Gilmore: Yes, I think so.

Mr. West: By the ruling of the Examiner as I understand it.

Mr. Giessow: He is talking about the measure.

Exam. Keeler: You are getting pretty dangerously close to the amount of the charge.

The present plane of the rates was made with the expectation that it would involve the service of concentration (R. 737) always, whereas a change has taken place since the original rates were made, and now those rates when used by the port concentrator do not include the service of interior concentration, and for that reason I regard the present plane of rates as being certainly high enough on intrastate cotton.

I have no information about the amount of refunds that are actually made for drayage at Galveston. (R. 738.) Item 65C, Supplement 16, to Texas Lines Tariff #29-A, Fonda's I. C. C. #79, states that the carriers will make an allowance not to exceed 13¢ per bale at Houston and 22¢ [fol. 249] per bale at Galveston. The rule may be read to mean not to exceed 13¢ at Houston and a full 22¢ at Galveston. That is a question of construction. Of the 719,000 bales handled by the port of Houston last year, the drays handled perhaps 75,000 bales from warehouse to the ship, the barge about 100,000 bales, and the rest was all switched. Those estimates are guesses. Before the switching line could raise their rates for switching cotton in Houston, it would be necessary to get permission from the Texas Railroad Commission. (R. 740.) My statement that if the

ports were given a second free concentration privilege, this privilege must also be given to the up-state concentration point is merely an expression of opinion; it seems natural that they would want it. Houston is both an interior point and a port; the ports have privileges such as demurrage which the interior points do not have. Interior points have privileges by way of indirect routing which the port concentration points do not have. It is my opinion, based upon experience, that the interior points would demand the same concentration privilege. As a matter of equity it seems to me that they must—that that must invariably follow. When we bring cotton to Houston which has been concentrated in the interior, and put it in our warehouse in Houston, and subsequently move it by railroad from those warehouses to the dock, we do not pay anything to the railroad for that concentration; that is because the railroad performs no service, but we do pay for the second concentration because we have the cost of delivery from the concentrating point to the ship. (R. 743.) When cotton concentrated in the interior is then concentrated again at Houston and reshipped by rail to some other part of the [fol. 250] United States, the second concentration charge is required by the tariff and we pay it. We do not have a large surplus of expense bills in Houston by reason of the movement by ship; as soon as the ship leaves the port, the railroad calls on the shipper who has sent cotton on that vessle and cancels the equivalent amount of billing. The tariff gives the shipper the privilege of substituting one bale for another, and he may not pay a second concentration on that particular bale, although (R. 744) it may have been a second concentration bale, because he has paid the tariff and has been given the privilege of substitution. The shippers of Houston and the railroads of Houston have an agreement which provides that all shippers will keep their billings in date order, and that as soon as the ship sails the inspection bureau has the privilege of coming to the shippers' Office and cancelling billing, starting with the oldest. This Bureau also checks all concentration claims, and can, and no doubt does, check any attempt on the part of the shipper to select expense bills which will enable him to avoid payment of a second concentration charge on cotton moving out of Houston via rail. I do not personally handle

concentration claims, but I know that the tariff gives us, as well as Galveston and New Orleans, the privilege of substituting one bale for another, and that the principle is well recognized in the cotton business—that the identity of a bale of cotton need not be followed. It is a uniform provision available at Dallas and every other concentration point. If, by the operation of that rule, a shipper avoids paying a second concentration I think he is entitled to do so. [fol. 251] The long time on demurrage for export cotton is a facility which is preserved exclusively for the interior shipper, is used only by him, and redounds to his benefit and not to the benefit of the port concentrator. A port concentrator cannot avail himself of it. (R. 747.) On cotton moving to Galveston or Houston under the export rates, the rate of 83½¢ does not include the wharfage, which is 2¢ per 100 lbs; that means that on through export shipments going through Galveston, the rate paid is actually 85½¢. I believe that it is correct that on a shipment going through one of the south Atlantic ports, say Savannah, assuming that the rate to the port is 40¢, the through rate would be made up by adding thereto the wharfage charge and, if the cotton [fol. 252] is handled by the railroad company, a handling charge. But, at the south Atlantic ports where the local rate if 40¢ to the depot or to the compress or warehouse, the shipside rate (R. 748) is made, so far as my knowledge, by the addition of an arbitrary of 5¢ which is specifically provided for in the tariff. It may be that 4¢ is the wharfage and 1¢ is the handling charge; the tariff provides that 5¢ puts the cotton to actual shipside. As to how that 5¢ is divided between wharfage and other elements that come up, I am not informed.

In a recent proceeding before the Texas Railroad Commission, the question of the average haul on cotton from Texas Common Points to Galveston, became important, and we made a very extensive computation, and found the average haul (R. 749) was 317 miles. It is a fact that the difference between the maximum distance which cotton may be handled under the blanket common point rate, and the minimum distance may very frequently exceed the out of line haul which could be performed in connection with the inter-state rate. The wharfage at Houston is 1½¢. The shipside rate of 83½¢ at both places includes all the hand-

ling charge to shipside, leaving only the wharfage to be accounted for. The Galveston Wharf Company would handle the cotton at Galveston for the Railroad.

WITNESS R. V. GILLESPIE

I am Traffic Manager of the Weatherford Crump & Company, Houston. Our position has not changed from our position in Docket 13,991, but we feel that there are other issues involved in this case. In Docket 13,991, we were contending against the discrimination against cotton which had been merchandised in the interior, and shipped direct to the port (R. 751) as an export shipment on which we made the contention that the city delivery rate of 80¢ had been as- [fol. 253] sessed, while at the same time we were being charge- 83½¢ for the identical service. The issue has been broadened some in this case, and we want to adopt part of our testimony in this case, the testimony of Mr. Clayton and Mr. Dalzell. We were shipping cotton to the facilities of the Shipside Density Compress at Galveston on the wharves, and that cotton was prepared to be exported and could be exported as it was without anything further being done to it, and we paid the 83½¢ rate. Some of it was high-densitied at that point. Other cotton moving in that condition, which was already merchandised in lots, so that it was in condition to move right on out, and upon which space had been reserved, was in fact, export cotton and should have been assessed the same rate, but was assessed the 80¢ rate.

My Exhibit A-14 is a photograph of the standard packages in which cotton is shipped. The high density compress of the Turning Basin Compress Company at Houston was put in operation about the first of September, 1921 (R. 753). The stockholders of Weatherford Crump & Co., are the stockholders of the Turning Basin Compress Company, and own every dollar of the stock. The Compress Co., performs compress service for anyone who wishes to avail himself of it; I think there are three other cotton firms who handle their business through the Turning Basin Compress. All of our cotton is handled on a concentration basis (R. 754). We felt there was more revenue to be derived from that class of cotton.

Exhibit A-15 shows the method of handling concentrated cotton. On page 1, we have shown on range 900 bales of cotton; this represents the first opportunity that the buyer of this cotton has to inspect shipment. It has either been unloaded from the cars and placed on the platform, where it is stacked and graded. The Exhibit refers to the handling of cotton through the Turning Basin Compress by Weatherford Crump & Company, which I understand is the method generally employed (R. 755). We have shown in colors the different cars of cotton. This represents 17 cars of cotton moving in from 17 points of origin. This Exhibit does not show actual shipment, but is intended to represent [fol. 254] the principle involved. These bales are numbered from 1 to 900, according to the system we follow and we can, at all times, identify any particular bale of cotton; we can take any shipment of outbound cotton and tell you where every bale of that cotton originated, or we can take any shipment of inbound cotton and tell you where every bale of that cotton moved to on final destination (R. 756). Under each column is shown the number of bales received in the car designated above that column, and the inbound marks, and the date of receipt. Next, is the car number and initial, the carrier handling the shipment into Houston, and the point of origin. The different colors represent different grades of cotton, which have not been ascertained by us at the time the cars are received in Houston (R. 757). It is necessary for us to ascertain those grades by taking samples of those bales after they are received. On the next page we have taken the same 900 bales of cotton and blocked it back in the warehouse in storage in even running grades and staples, showing the number of bales of each class of cotton received from the individual inbound movement as shown on the front page, we numbered those cars from 1 to 17. In the first column we have three bales of cotton showing that they were received from car #1. By referring to page 1, you will find that those three bales of cotton came from Cameron. We do not actually put a tag on the bale showing what car it came in on. I will submit later a record of an actual shipment handled which will show that we received 9 bales of this particular grade of cotton out of car #2, and so on until we have finally taken care of the entire 900 bales of

cotton (R. 758). As a matter of actual practice, a compartment may have in it cotton that comes out of hundreds of cars; I used this 900 bales as I thought it a fair sample as representing about one day's receipt at the Turning Basin Compress. On page 3, we have shipped this 900 bales of cotton to various destinations, still following out the individual bales by their tag numbers. It is not uniform to ship cotton in 50 bale lots; generally speaking it moves in 100 bale lots. I use 50 bales in this instance in [fol. 255] order to distribute the cotton over a large territory to show the method in which it is handled. I used 100 bales outbound. In the first column we have a shipment of 50 bales moving to Greenville, S. C. The first bale is #15, and by referring to sheet #1, we see that it came in from Cameron. Going down the line, we find under that bale #100, which came in from Victoria, another section of the state entirely (R. 759). On sheet #1 we find bale #15, and below it, bale #16, which also came from Cameron, and we find that it went to Liverpool by Savannah, and that the cotton as far as the carrier is concerned absolutely loses its identity. You could not consider this 47 bales of cotton from Cameron as being in a through movement to any particular place, because their records absolutely show that it went to 18 different destinations. You will find some cotton here that was moved to Bonham, and our records wil show that we have brought cotton into Houston, concentrated it, and shipped it back to Texas Mills. I will admit that that is not the general practice, but at times we do it (R. 760). It is impossible to tell when you ship that cotton in whether it is inter-state or intra-state after it moved into our plant. When it moves into our plant on a local bill of lading, we have no way of knowing whether it is intra-state or inter-state (R. 761). Greenville is a southe-st milling point. There are about 20 mills in Texas that consume cotton (R. 762). It might be possible that some of this cotton would move out in tramp steamers to coastwise points. I do not recall any independent line handling coastwise traffic to where there is no through rate published except possibly to Pacific Coast. We have not shipped any cotton by the Mallory Line direct to Boston. I would not say that they do or do not do it. There is no reason why tramp steamers should not engage in handling this cotton. We have loaded

cotton at New Orleans which was handled in that manner.

My Exhibit A-16 shows the actual shipment of 25 bales of cotton from Elgin, Texas, coming into Houston, showing on the left hand column the compress tag numbers of cotton moving into the Turning Basin Compress Company; all [fol. 256] cotton moving into the Turning Basin Compress Company is tagged, and we can follow any individual bale. On the right side, we show a recap of the various grades, showing in that 25 bales of cotton that there were six different grades of cotton received. Below we show the outbound movement, giving Weatherford Crump & Co. order number, Turning Basin Compress Company's order number, the outbound mark, number of bales of cotton covered by the order, which in each instance was 100 bales, and the number of bales received on this particular shipment we were to apply on those particular orders; this shipment was received at the press on April 13th, 1922. The first (R. 765) bale of that cotton did not move from Houston until April 25th, about twelve days later, moving to Greenville, S. C., only three bales. Next there are three different shipments going to Kobi, Japan, two bales on the 26th, and on the first of May two shipments to Kobi, different orders, different shipments, perhaps consigned to different consignees. Following the shipment throughout, we find that we moved this 25 bales of cotton out in eight different shipments. The last bale moving out on May 30th. It would have been impossible to go out to Elgin and buy this 25 bales of cotton, figuring that we were going to ship it to these particular points. The lower part of this page has been worked out and added on. The top of this sheet, showing the class, marks and the recap, is a copy of the weight sheet that comes to our office. We can take any order that is given to ship 100 bales of cotton, and turn it over on the back and see the tag numbers of every bale that was applied on that order, and then you can refer back to these sheets and get the actual origin. It is very expensive to do that, and I would not say that it is practical. We keep it for our own convenience, but we do not trace them [fol. 257] back. We use it occasionally on boll weevilly cotton, but it is not used to any extent; we have always maintained such a record (R. 767). They can at all times tell from the records where the bale of cotton came from,

its grade, date of receipt, date of its shipment and destination.

Exhibit A-17 is practically the same as Exhibit A-16 except that in this instance, we had only 24 bales that went [fol. 258] into 9 different grades.

Exhibit A-18 shows every bale of cotton received and forwarded by the Turning Basin Compress for the season, June 1st, 1922, to May 31st, 1923 (R. 768).

Exhibit A-19 shows the approximate percentage of Weatherford Crump & Company's cotton which was exported and the approximate percentage which was shipped otherwise. I went over the outbound records and tabulated them. While I was not careful to make an absolutely correct copy, I don't suppose any of them would vary more than 1%. The Turning Basin Compress Company has to re-handle all of its cotton to get it to the ship's tackle. Our charges at the Turning Basin Compress are a little different from those of our competitors; (R. 769). Our charge for compression has been for the last three years since the press was in operation 75¢ per bale for high density, and we charge 10¢ per bale additional for loading that cotton in cars, or 15¢ additional for delivering it to the ship, and I have wondered how we get any business when the other man has been doing it for less. That has no reference to any concentration charge. It is for high density. If we concentrate cotton, the same 15¢ is authorized. Our tariff is made up of a number of items, and that is one of the expenses a man must pay. We do not have a flat concentration charge. For the same service that is performed for the 50¢ concentration charge, I would be safe in saying that we are charging 80¢. The cotton we deliver to ship's tackle is handled twice by hand truck (R. 770). I think that is an expensive operation. I have arrived at an estimate as to that cost in this way. The compress does not run at its capacity at all times; there are some days when we have a gang that does nothing but truck cotton to shipside. We have taken those days and tabulated the cost of handling the number of bales handled by those particular gangs, and prorated the overhead expense against the number of bales handled, and charged their part of it back to this handling charge. That gives us the minimum cost, because during the light season we will have a gang of men that may stay

for an hour or two with nothing to do and work on an odd job here and there, trucking of course at all times, but not [fol. 259] delivering to shipside at all times. We found 62 days during the last two years that we could absolutely get a record on, and that record shows, (R. 771) the actual expense of delivering that cotton to shipside was 14¢ per bale.

Exhibit A-20 gives a map of the Houston switching district, showing the general location of cotton warehouses in Houston, and having in the upper right hand corner an enlarged map of the turning basin. The insert in the lower left hand corner is a reduced size rough map showing the surrounding territory (R. 773).

I have freight bills showing that the carriers are collecting the tariff charges, as shown in the tariff, from Shiner, Texas to Houston, contrary to the statement made by a witness at Houston. These freight bills cover all the cotton that we have received from Shiner this season, and it is billed compressed cotton (R. 774).

Cross-examination:

One hundred percent of the movement shown on Exhibit A-15, A-16 and A-17 out of our plant was to points beyond the borders of Texas. The Texas Commission rate, the intra-state rate, was paid on that cotton when it came into our plant. I think it was testified in Docket 13,991 that the average distance from our plant to the ship was 600 ft. (R. 775). The only purpose of these Exhibits is to show the method of handling cotton at the concentrating plant. I adopt the testimony of Mr. Dalzell and Mr. Clayton, which fully explains our position as to the rates. Whether the 14¢ per bale cost that is stated in the record includes the trucking from our compress to the wharves of the municipal terminal depends on where the cotton was picked up when they started to the wharves. The cotton may not [fol. 260] have been in the compress. It might have been in storage, it may have been in the north end of Shed A, it may have been compressed on arrival and blocked back in even running grades and staples and may have been picked up in one of the sheds. A whole lot of our cotton moves out of storage to shipside without recompression.

Every bale of our cotton as it comes in, is compressed on arrival to high density. No high density cotton is shipped to American Mills; we also introduce an Exhibit that shows 85% of our cotton was exported. We shipped 200 bales of high density cotton to southeastern mills, and that cotton was rejected and we had to re-ship the cotton to Savannah and export that. We have handled no cotton through the [fol. 261] port of New York for (R. 778) export. Sixty percent of our export business through the port of Houston is delivered over piers 7 and 8, which are not adjacent to our facilities. We barge and switch a considerable amount of cotton to the southside to make delivery. Sixty percent is the only cotton handled by hand truck at our plant. Wetherford Crump & Company bears the expense of movement on the cotton that moves over other facilities than the piers adjacent to our plant, if Wetherford Crump & Company owns the cotton. There is nothing in the charges that we make there for concentration, or for compression, that would carry that cotton out (R. 779). We merchandise 100% of the cotton we handle at Houston, and it is our position that because that cotton is merchandised it is proper to apply the intra-state rate. On the 35% of export cotton shown on Exhibit A-19, which we moved through Galveston, we were required to pay the export rate of 83½¢; on some of that cotton you might not say we were required, on some of it we insisted on the export rate because we feel that is the only rate to apply. We handled some of this cotton through the High Density Compress; I do not say that we handled this particular cotton.

In suggesting a one rate plan in our brief, in Docket 13,991, we were considering only the information that we had before us in the record. We feel that there has been sufficient information introduced into this record that would absolutely make the one rate plan impracticable, and we wish to have that part of our brief entirely ignored, as the record at that time was not as complete as it is now. As long as you have one rate to Houston, the plant should take the same rate, regardless of where the plant is located, and regardless of any additional service to one over the other.

[fol. 262] WITNESS J. L. WEST RECALLED

Mr. McCord's statement that his examination of the refund of 22¢ a bale for drayage at Galveston covered only a comparatively few claims and that in all cases he found the full amount of 22¢ had been refunded, reminded me of information which reached me from my members that they did not trouble to make a claim for 22¢ because the difference in what they would recover would be only a small amount, 2¢ or 3¢ or 4¢ a bale, because when a claim for refund of drayage is presented, the railroad applies the shipside rate. When cotton comes in, it pays 80¢. If they put in a claim for a refund of 22¢ or for whatever the drayage may be, the railroad necessarily applies the shipside rate of 83½¢, or 3½¢ more, so that all they would recover would be whatever drayage they had paid in excess of 83½¢ (R. 783) per 100 lbs. or 18¢ per bale. I do not know the number of bales, because I have not had access to our members records to that extent, but I do know that in the course of our business day by day, we have heard frequently of the fact that our members did not present claims for any refund in drayage, due to the smallness of the amount and to their general disinclination to work. The only object in presenting a claim for drayage would be to get the maximum of 22¢ (R. 784). I think it is fair to assume that the claims that are presented would be for 22¢ rather than for 18¢. I think the only way to get at the real situation is to go through the whole record and find out how many bales of cotton were moved on which claims might have been presented, but were not (R. 785). The 22¢ rate of refund, was originally 13¢ years ago, and has been changed by increases ordered by the Director General and allowed by the Interstate Commerce Commission so that it is a fictitious figure. I suggested to the railroads a year ago that this was an improper figure and that the maximum amount should be 18¢. I prefer to see it on the proper basis, but for some reason nothing has been done. If Mr. Fulbright merely wants to ascertain whether some shipper is paying 18¢ a bale for drayage and in getting back 22¢ [fol. 263] per bale, I will join him, for I think that should be stopped quickly. I cannot imagine its being done except inadvertently (R. 786).

WITNESS HORACE BOOTH RECALLED

At the time the 22¢ per bale drayage (R. 787) allowance was published, the carriers were furnished evidence showing that that represented the cost of the service. We have no information that the drayage cost has been reduced since that time. It has been shown by the testimony of Galveston shippers in this case that the service is being actually performed at 18¢. It will be the purpose of the carrier to amend that item in the tariff so as to provide for a drayage allowance not to exceed the actual cost of the service. My road has been called upon to refund these charges in compliance with this paragraph; in many cases we have been presented with a claim for drayage for 22¢ per bale, supported by a bill for drayage in that amount; but I do not understand that the practice has been to require that the particular shipper presenting the bill shall support his claim by a receipt which is given to him by the drayage company. I agree with Mr. McCord's interpretation of that tariff insofar as he referred to the drayage bill as the drayage bill of shipper to the railroad lines as distinguished from the receipts of the drayman to shipper. In many cases a drayage is performed by the shipper himself, by his own facilities (R. 789).

Narrative of the Proceedings in Interstate Commerce Commission Docket #14940, Application of Rates on Cotton to the Gulf Ports, and Docket #13991, Wetherford Crump & Company, Complainants, vs. Abilene and Southern [fol. 264] **Railway Company et al., Defendants, at New Orleans, Louisiana, October 29, 1923**

WITNESS CARL GIESSOW

I am General Manager of the New Orleans Joint Traffic Bureau, a voluntary organization of various civic and com- [fol. 265] mercial bodies in the City of New Orleans, embracing the New Orleans Cotton Exchange and the Board of Commissioners of the part of New Orleans. I have been

connected with the New Orleans joint Traffic Bureau in an official capacity since July 1st, 1917; I have been General Manager since March, 1919. Prior to 1917, I had approximately eleven years (R. 795) of experience in traffic work, being connected with one of the Southwestern Lines, the St. Louis & San Francisco Railroad at St. Louis. I was Chief Clerk in the Freight Traffic Department with that Railroad for four years, prior to June 30, 1917. The New Orleans Joint Traffic Bureau is one of the parties joining in the request upon the Interstate Commerce Commission for this investigation. We feel that there is nothing improper in the application of the rate as now applied at New Orleans, where a two rate plan is operated in much the same manner as at the Texas ports, one on local or depot delivered cotton, and another on shipside or export cotton. The rates applicable to shipside on export cotton is generally higher by slightly varying amounts, than the rates applicable to local or depot delivery. One notable exception is with respect to rates on shipments for export from points in the northeastern portion of the State of Texas, from which territory the rates to New Orleans for export are considerably below the rates applicable for local or depot (R. 796) delivery. To illustrate, the rate for local or depot delivery as I recall it, is 96¢ per 100 lbs., while the rate for shipside delivery is 85½¢ per 100 lbs., the latter rate being published under the so-called port equalization scheme, and designed to place the port of New Orleans shipside on a parity with the port of Galveston shipside. The scheme of rates has had the approval of the Interstate Commerce Commission under I. & S. Docket 65, 65-A and 65-B, 23 I. C. C.

My Exhibit A-21, is a map of the port of New Orleans, showing the location as indicated in red, of the various compresses and cotton warehouses located in the port of [fol. 266] New Orleans. The land area on the map does not include the New Orleans Compress Company; its location is indicated by an arrow pointing to the left at the extreme upper left hand corner of the map. I judge that the distance between the extreme left hand border of the map at which the plant is located is about two (R. 797) miles. It may be slightly more or slightly less. The map shows that all of the facilities at New Orleans with the

possible exception of the facility of the public cotton warehouse are clearly what has been designated in this proceeding as up-town compresses or facilities. We believe that the public Cotton Warehouse is also an up-town facility but because there is a wharf adjacent to the compress and warehouse proper, I have excepted it in order to explain the situation; its exact location with reference to the wharf will be further indicated in another exhibit. The Pelican Press is not located adjacent to a wharf. It is the closest of the up-town compresses to a wharf, but the street and a number of railroads' tracks intervene, and in the application of charges, and in every other matter the Pelican Press is strictly an up-town compress.

My exhibit A-22 is a statement showing the storage capacity of bales of cotton at compress warehouses and railroad (R. 798) terminals in New Orleans. The total capacity of the cotton compresses is shown as being 532,500 bales, and of the railroad facilities 158,000 bales, aggregating 690,500 bales for both.

My Exhibit A-23 is a statement showing the cotton compresses and warehouses in New Orleans, their storage capacity in bales, and the facilities at such compresses and warehouses for compression. It shows that there are eight high density compresses at the port which I understand can also compress to standard density, and two strictly standard density compresses. One facility, the Louisiana, has no compress. None of the Railroad terminals indicated on Exhibit A-22 are provided with compresses.

My Exhibit A-24 is a statement showing the ownership of the cotton compresses located in the City of New Or- [fol. 267] leans (R. 799). The new planters' compress and the Commercial Compress are not located on railroad tracks, and shipments inward or outward are handled by drays, floats or trucks. By trucks I refer to trucks other than hand trucks.

My exhibit A-25 is a statement showing the location of high density compresses in the southwestern states of Arkansas, Oklahoma, Louisiana, and Texas.

My Exhibit A-26 is a statement showing the cost per bale of compressing various classes of cotton at the points shown. We were unable to get informatoin as to the charges for the various densities of compression at all

points (R. 800). "Cost per bale of 500 lbs. compressing" means a charge for compressing as made by the compress, and not the cost of rendering the service.

My Exhibit A-27 is a statement showing the switching charges at New Orleans from the various compresses located on railroad facilities to three representative wharves or docks on the city front at New Orleans. The docks were selected as representing three different points of delivery. The "City Front" is intended to indicate the facilities that are administered by the Board of Commissioners of the port of New Orleans. The facilities are owned by the state of Louisiana, and operated by the Board of Commissioners. In addition, there are also railroad facilities (R. 801), those of the Illinois Central Railroad, known as the Stuyvesant Docks, located between the public cotton warehouse and the Robbin St. Wharf. This is to show that the wharves selected for this Exhibit are fairly representative. The Exhibit shows that the charge to each is the same, and it is fair to say that the cost of making delivery from those different compresses to the City Front facilities is the same. When cotton is handled outward from the compress to any of the city front wharves by switch movement, there are certain additional charges in addition to the switching charges, which that cotton incurs, for example, where the compress does not earn *compress does* [fol. 268] *not earn* compression, there is an outward loading charge into the cars of 10¢ per bale; there is also an unloading charge at the docks of 6¢ per bale, and a tollage charge of ¾¢ per 100 lbs. Based on a 500 lb. bale, the aggregate of those additional charges is 3.95¢ per 100 lbs. (R. 802). The Pelican and Crescent City Presses are located on the Illinois Central and the Gulf Coast Lines, the latter using the terminals of the Illinois Central Railroad. I do not show the switching from the Pelican or Crescent City Compress to the Illinois Central Terminal. It is possible that they could make such delivery, but I understand that it is not generally done. From the City Front Compresses, there is in normal times but a very, very small movement by switch. I understand that the vessels come to the Illinois Central Docks and get quite a lot of cotton there; however, it mostly moves on through export bills of lading from the interior.

My Exhibit A-28 is a statement showing comparison of rates to New Orleans, Houston and Galveston, from representative points in the southwestern states of Oklahoma, Arkansas, Louisiana, and Texas for depot and shipside delivery for export. Its purpose is to show the difference between depot delivery and shipside rates at these various ports from representative Southwestern points of origin (R. 803). A competitive feature is involved in two cases now pending before the Interstate Commerce Commission, namely I. & S. Docket 1858, and I. C. C. Docket 15,083, and Sub. #1.

My exhibit A-29 is a statement showing receipts and disposition of cotton at New Orleans for the season August 1st, 1922, to July 31st, 1923. This covers receipts from all sources and includes cotton moving into warehouses, and also cotton moving through without stopping at the Port. It shows that 1,453,892 bales were received. That there was an export movement by vessel from the port of 814,017 bales, or 54 and 8/10 per cent of the total. There was a coastwise movement of 312,446 bales, or 21.6 per cent of the total movement. There was a movement by rail to northern mills of 2,716 bales, or 1/10 of one per cent. There was a movement by rail to southern mills of 308,156 bales, or 20.7%. There was a local consumption of 43,632 [fol. 269] bales or 2%. The total outward movement was 1,480,967 bales, an amount slightly in excess of the receipts. That excess was taken from stock that was on hand at the beginning of the year (R. 804).

The one rate plan which has been suggested to correct alleged discriminations between water front and up-town compresses at other ports, contemplates, I understand, that where cotton is concentrated at the port, the outward movement from the so-called up-town compresses to shipside would be made under the shipside rate without additional charge in the way of penalty for second concentration. We are not in favor of a single rate scheme. The two rate plan in our opinion, is the logical plan, and a just plan. The higher rate to shipside should, and does, in a general way, represent the approximate added cost of delivery to shipside. The propriety of such a plan has been recognized by the Commission in previous cases, specifically I. & S. Docket 955, 46 I. C. C. 451, and I. C. C. Docket 11,965,

77 I. C. C. 388. These two cases relate to rates on cotton from designated points in the southwestern states, but it is not restricted to southwestern states. The rate from the southeastern territory, being the territory lying east of the Mississippi river, is a two rate basis, and is uniformly applied at all south Atlantic ports and Gulf ports, New Orleans and east. That basis is not applied from Oklahoma to New Orleans, but it should be under the language of the Commission in Docket 11,965. The Commission stated on page 413 of 77 I. C. C.: "It is obvious that a uniform basis for fixing export rates upon cotton from the Southwest to New Orleans and the Texas ports should be established, and that export rates which exceed the domes- [fol. 270] tic rates by the amount of the charge for moving the cotton from the rail terminus to ship side are not only reasonable and proper but are necessary to avoid the discrimination pointed out in Louisiana Cotton, Supra." In regard to the two rate plan as applicable to the South Atlantic and Gulf Port, New Orleans and east, from southeastern territory, the rates are published in Glenn's Ports Cotton Tariffs, #3, I. C. C. A-370. Note 1 of that tariff, page 48, specifically states "Rates named in this tariff will not include delivery to shipside." (R. 806) The specific figures in the tariff are the rates for local or depot delivery." Note B on the same page is captioned "Rates for export to Shipside." That note provides that when for export and to apply only as proportion of through export rate and export bills of lading showing through rates to foreign destinations, rates will be 5¢ per 100 lbs. higher than to the port proper. The 5¢ is exactly equal to the combined charge for wharfage and handling at the South Atlantic and Gulf Ports east of New Orleans as covered [fol. 271] by Agent J. H. Glenn's Port Charges Tariffs #4, I. C. C. A-439 which is, however, not the current tariff. It is to become effective November 24th, 1923. The current Tariff, Glenn's Port Charges Tariff #3, I. C. C. 382, provides for the same charges. The first named tariff under item 110 specifies wharfage charges, including 10 days storage of 5¢ per bale, which reduced to cents per 100 lbs. on the basis of 500 pounds per bale, is 1¢. The same item reflects a handling charge either between shipside in cars, or between storage and shipside of 20¢ per bale, (R. 897),

or 4¢ per 100 lbs. The aggregate of these two charges on the basis of a 500 lb. bale is exactly 5¢, the amount added to the local rate in order to make shipside delivery rates. That 5¢ will approximately get the cotton from the compress and warehouses to shipside, but not exactly. Exhibit A-27 shows different switching charges, in addition to which there are added certain other charges. But as a practical matter there is but very slight movement by switching cars from compresses to the water front except from the New Orleans Compress Company located at Shrewsbury. I understand from that tariff that there are no further wharfage or handling charges applied on cotton which moves out for export where the carrier performs the service. (R. 808). That difference between the export and the domestic rate merely reflects the wharfage and handling charges as designated by the tariff. That means movement from cars to shipside, and movement from storage to shipside. As a practical matter, I understand that cotton is unloaded upon receipt of it by the carriers into their facilities, and that it is frequently further moved after a ship is berthed. There is no attempt in that 5¢ differential to absorb the cost of draying from up-town warehouses. Some of these railroad facilities are immediately at shipside, and some of them are not. If a shipment moves on a through bill of lading or on an export bill of lading through the port and the vessel was docked waiting for the cargo, there would be this 5¢ charge if there were no specific rate applicable to shipside. From the southeast the specific rates applicable to shipside would be 5¢ higher than the rates for local or depot delivery (R. 809). [fol. 272] The 5¢ charge is made in addition to the rates applicable for local or depot delivery, and when made includes all expense of delivery to shipside. At New Orleans a 5¢ charge designated as handling charge and carrying no separation as between handling and wharfage, includes in its actual application, all of the same services as does the 4¢ and the 1¢ at the other South Atlantic and Gulf Ports (R. 810). On a shipment coming into New Orleans to an up-town warehouse and there merchandised and then switched to the water front property, if concentration were availed of, a rate of 5¢ per 100 lbs. higher than that applicable to the facility, would be assessed and include all delivery by the carrier. Or the shipper might avail himself

of any concentration privilege on the part of the railroad and pay whatever the actual cost was to put it to the shipside. In that case, the shipper would pay the tollage. The item covering the 5¢ handling charge at New Orleans is item 50 of Agent W. P. Emerson's Joint Demurrage and Handling Charges Tariff #1-M, I. C. C. #77. The rates on cotton to New Orleans from the southwestern states and also from the southeastern states, have largely been fixed as a result of proceedings before the Interstate Commerce Commission (R. 811).

It has been testified that a greater free time allowance is made at New Orleans than at Galveston, the allowance on domestic business being four days, and on export business 7 days on compressed cotton. Those allowances are contained in item 19 of Agent W. P. Emerson's Joint Demurrage and Handling Charges Tariff #1-M, I. C. C. 77. They are free time allowances in connection with the charge for space rental of cotton. The present charges bear the approval of the Commission. Those free time allowances do not apply on cotton held in cars (R. 813). In the prior hearing, it developed that on cotton on which the privilege of concentration is not taken, the carriers make an allowance of 1¢ per 100 pounds for unloading at Houston and Galveston; the same group of carriers serving New Orleans [fol. 273] make no such allowance, and we request at this time that this allowance should be made at New Orleans. Whether the carriers or the shippers unload at New Orleans, depends on where the unloading is ordered. At the Compresses, the expense of unloading is borne by the cotton warehouse; if cotton is unloaded when moving under a through bill of lading at the docks, the unloading is performed by the carriers, and they receive compensation under the rate for their services. The provisions covering such allowances at Houston, Galveston and Texas City are Items 142 and 145 in A. C. Fonda's Tariff #29-A. I. C. C. #79. At Houston and Galveston, the carriers also authorized in connection with the shipside rate, allowances for drayage when performed by facilities other than their own. The allowance at Houston and Galveston is (R. 814) covered by Item 65-C of the tariff just referred to, and that Houston is not to exceed 13¢ and Galveston 22¢. Only two of the carriers serving New Orleans from the West

have authorized the option of delivery by dray from the Compress in lieu of switch movement where a concentration was used, and in both cases have restricted their absorption to the maximum of 15¢ per bale. The expense of drayage at New Orleans is an economy of 25¢ per bale. The absorption at Galveston, we understand, covers the full expense of the drayage, while as to Houston there is some doubt. Certainly the full expense of drayage is not covered at New Orleans, and we would like the record to show that we are requesting that the allowance at New Orleans be increased an amount that will figure at least equal to the maximum allowance made at either of the Texas Ports. The Gulf Coast Lines and the Southern Pacific Lines are the two lines making that absorption at New Orleans. (R. 815).

Cross-examination:

At the Public Cotton Warehouse in New Orleans, there is a wharf which is somewhat further removed from the compress and storage chambers than is the case of either the Long Reach Compress at Houston or the Turning Basin Compress at Houston, or the Shipside High Density compresses at Galveston, or some of the Concentration (R. 816) Company's facilities at Galveston. I understand there is [fol. 274] no storage of cotton on the wharf for account of owners. Some cotton may be held there for account of the Steamships, but it is the property of the Steamships, having been delivered to them by placement on their wharf. The Public Cotton Warehouse has no interest in cotton whatever except as a warehouse or a storeroom. When cotton moves to uptown warehouses in New Orleans, and is there compressed at the charge of 75¢, the compress companies deliver to shipside for the 75¢ charge. (R. 817). That is not the situation at all compresses at Houston. The situation at New Orleans is a matter of recent date, beginning, to the best of knowledge, with the present cotton season, and, so far as I am advised, was compelled by competitive conditions existing at the port of Galveston. At Galveston and Houston, the carriers generally provide that they will make an allowance for drayage in connection with the export rate, whereas in New Orleans except for the two carriers I mentioned have, up to the present time, no pro-

vision has been made for the drayage allowance; and the allowance as made does not compensate for the cost, or rather for the charge for movement, which from the City Compresses in New Orleans, except the New Orleans Cotton Compress, and the Public Cotton warehouse, to City Front, other than wharf at the cotton warehouse by dray, is 25¢ per bale. That charge also applies to the wharf at the cotton warehouse from presses other than the Public Compress. (R. 818). I understand that the charge made by the draymen for the movement of the cotton from the compresses in the City, moving from the Public Cotton Warehouse, to City Front Wharves, is 85¢ per bale. The exception to that is the movement from the Public Cotton Warehouse to the wharf adjacent to it, where services are performed by facilities afforded by the warehouses themselves, and not by public draymen. The drayage charge from the New Orleans Compress Company to the city front wharves is 70¢ per bale. If the Public Cotton Warehouse does not furnish compression, the charge made for delivery of cotton to the docks adjacent is 15¢ per bale. (R. 819). That delivery is made by electric trucks. (R. 820). The compress companies at New Orleans charge 10¢ per bale for [fol. 275] delivery by truck to the drays when the shipper pays the drayage. I would assume that the 10 days free storage at the South Atlantic Ports at a wharfage charge of 1¢ per 100 pounds, would be the same as the 15 days free time allowed by the wharf company, for instance, for assembling cargo in advance of the arrival of the boat. (R. 821). I don't know what it costs a carrier to make delivery to the interior warehouses compared with the cost in making delivery to shipside on a through bill of lading. Whether the switching charges are the same would depend upon the point of delivery. As a general proposition it is not necessarily true that the switching charges are the same. The switching charges of the Public Belt is the same as that of the line haul carriers to the compress on the city front. (R. 822). I think that the switching charge assessed against a movement of cotton from the Pelican and Crescent City Compresses to the Illinois Central Docks, would probably be greater than the Public Belt charge of $6.30, shown on Exhibit A-27. It would be a one line service. All cotton rates applying to New Orleans and to Hous-

ton and Galveston from interior points, are on the any quantity basis, and the carrier is obligated to load and unload. I heard Mr. Dalzell's testimony that the drayage at Houston was in no case less than 18¢. (R. 823). It is not my contention that the carriers should in any case absorb more than the actual cost of drayage. I think the maximum absorption might reasonably be uniform; and the same maximum might apply at all three ports. New Orleans has constructed an industrial canal, one purpose of it being to afford water front facilities for private industries that may be located along its banks. I know of no reason why one of these compress companies here might not construct a warehouse facility adjacent to the industrial canal. All [fol. 276] of the warehouse facilities in my Exhibit, including the warehouses of the Public Cotton Warehouse, are used by cotton merchants for the performance of the merchandising service or concentration. They hold themselves apt to give that service to whoever desires it to the extent of their facilities (R. 824). The figures in Exhibit A-29 showing the net receipts of cotton at New Orleans for that year, were furnished to me by the Secretary of the Cotton Exchange and it was stated at that time that they included all cotton which moved through New Orleans on railroad movement without being stopped here. We have no information as to why the net figures shown by the Secretary's Report of the Port of New Orleans shows 100,000 bales less than the total shown by my report. I understand that the carriers apply the export rate on all shipments moving on local bills of lading for export which go directly to shipside. On cotton which is merchandised, the domestic rate is applied. There may be some small quantity of cotton that comes into the Public Cotton Warehouse and is there compressed to high density and is shipped out without merchandising and without change in the marks or lots (R. 826). Our thought is, that on cotton so handled, the export or higher rate should be applied, as there appears to be no question but that is export cotton. That would be cotton of the same character as Mr. McCord showed in his exhibit as moving through the High Density Compress at Galveston and the High Density Compress at Houston at the Houston Compress Company, where no service but compression to high density was performed, the cotton being already in

condition to be exported except for the reduction in the size of the bale. At New Orleans where the higher shipside [fol. 277] rate is charged on cotton moving under Glenn's Port Cotton Tariff, that additional 5¢ is what the carrier received for the service of placing it to shipside. If the shipper performs that service, he would pay the local rate and pay for the service, or else he would have to apply the shipside rate, and an absorption back of the drayage, if any absorption was allowed (R. 827), but no absorption is allowed except in the case of the Gulf Coast Lines and the Southern Pacific. If he was switching over, he could file a concentration claim on first concentrated cotton. We request to have 1¢ per 100 lbs. unloading allowed on cotton which is not concentrated, the same allowance which is made at the Texas ports. My information is that cotton is not concentrated on the warehouses adjacent to the Southern Pacific Dock, in the sense that cotton is concentrated at these other facilities. It is not stored there for the account of the shipper, except as incidental to through car- [fol. 278] riage. The facilities do not hold themselves out as warehouse men purely. When the Illinois Central makes port delivery, it discharges its cotton at the compress if there is sufficient quantity in the car, and if they have orders on hand at the time of the receipt of the cotton (R. 828). If they have no orders, they discharge it at their depot in what they designate as cotton sheds. They will deliver it from these cotton sheds to shipside at 5¢ per 100 lbs. As I understand it, Steamship Agents do not sign for cotton in the public warehouse, until the cotton is located on the wharf. On the wharf it will be within 200 feet of the ship (R. 829).

The wharfage is absorbed in addition to the allowance for drayage at Galveston. That allowance is made only where the shipside rate is applied, and the shipside rates at Galveston include 2¢ wharfage, so there you are really getting 32¢ per bale. If these two absorptions are reasonable and proper at Galveston, they should also be reasonable and proper at New Orleans, because the port is strictly in competition with the other ports, and an allowance there which is higher than New Orleans affects the movement of the cotton to the extent of the difference of the cost. The 83½¢ rate is not really a shipside rate because it does not in-

clude all of the expense of delivery to the ship there being in addition, the wharfage (R. 830). I understand it does include all expenses of delivery to the shipside on coastwise traffic at Galveston. On traffic which comes into New Orleans and moves out by coastwise steamer, where through rates are in effect, the shipments are generally handled under concentration, and the through rate includes the expense of delivery into and out of the compress. A considerable portion of that cotton is handled on joint through rates with the water line. Where it is not, if the cotton were merchandised the expense of delivery to the ship would have to be borne by the cotton, and the domestic rate would be applied.

On cotton received at New Orleans, from Shreveport, in standard density packages, and merchandised here, a rate of 70½¢ per 100 lbs. would be charged. If that cotton were [fol. 279] high densitied and moved to city front for export there would be no added payment to the carrier by the owner, the compressor undertaking under his compressing charge to assume the expense of movement from the compress to the shipside. There would, however, be paid the tollage charge of ¾¢ per 100 lbs. The cotton would bear that. On a shipment of cotton moving direct from Shreveport to New Orleans for shipside, the cotton would pay 75¢ per 100 lbs. At the present time, the tariffs of the carriers' do not authorize high density compression in transit at New Orleans. If the cotton were for high density compression, the shipper would have to pay the 75¢ charge under which he would be entitled to have his cotton moved to shipside at the expense of the compressor, and on which in addition to the compression charge, he would pay ¾¢ tollage, but he would there have paid in the first instance (R. 832), 70½¢ per 100 lbs. Since compression in transit is not authorized under the through rate, he would doubtless consign the cotton to himself in care of the compress, have it compressed and moved out. The compress would assume the expense of draying to the shipside, and the shipper paying in addition to his inbound rate, the tollage charge through the port of ¾¢. As to that cotton, there is some question as to what rate should lawfully be applied. My opinion is that the cotton having been export cotton at the time of its shipment, the character of the marks and the lots not having been changed, the only service given the cotton being that of re-

duction in the size of the package, the cotton was export cotton, and the shipside rate should be applied to it. Such cotton would take a 75¢ rate. Since the carrier would not know whether to apply that rate unless there was some notation for export or other evidence that it was to be exported, it is possible that they would apply the 70½¢ rate (R. 833). My answer is based upon what I think should legally be applied under the tariff, and not necessarily what is applied. Where cotton was concentrated and concentration claim was filed, there is no distinction between the uptown and the downtown compresses so far as the 75¢ charge covering the cost of taking the cotton from the respective compresses [fol. 280] to shipside is concerned. All compresses at New Orleans make the same charge for standard density cotton, 60¢, and for high densitied cotton, 75¢, and when the compresses earn compression, they undertake to make delivery to the city front docks out of the compression charge. They include in that compression charge the cost of delivery. It is really a compression-delivery charge (R. 835). The charges do not specify a concentration. They are separate and cover different services.

The tariffs which authorize the option of drayage in connection with delivery of concentrated shipments to shipside, under the shipside rates are Gulf Coast Lines Tariff 731-F, I. C. C. A-674, Supplement 2, Item 115, effective September 15th, 1923, and Southern Pacific Company, M. L. & T. R. R. & S. F. Co. Tariff 1499-C., I. C. C. 4474-C, Item 110, effective October 10, 1923. The citation in connection with space rental charges is Railroad Space (R. 836) rental charges on compress and uncompressed cotton at Louisiana port, 66 I. C. C. 121.

WITNESS E. H. LOCKENBERG

I am Superintendent of the Public Cotton Warehouse of the Board of Commissioners of the port of New Orleans; my duties embrace the supervision and operation of that facility. My exhibit A-30 is, to the best of my knowledge and believe, a correct representation of that facility (R. 837). The warehouse is divided into five units known as J, K, G, H, and L, and a compress room. Orders for delivery

of cotton are furnished by the shippers to the carriers direct for delivery of cotton to the public cotton warehouse. The warehouse is furnished either with standing instructions or specific instructions as to what disposition should be made of the cotton upon receipt. Storers are assigned to the various units, and immediately upon receipt of cotton at the warehouse, it is placed at its respective unit at which part it is unloaded from cars and accorded the different services that [fol. 281] consignees request, such as sampling and weighing and compressing. The cotton is either stored or reshipped or delivered to other parties in accordance with the instructions of the owner. A receiving charge of 15¢ is assessed against all cotton received at the warehouse with the exception of transit cotton, there being no receiving charge against it. After the assessment of the 15¢ charge a storage charge per day of 7 mills, seven tenths of a cent, is assessed (R. 838). That charge is 7 mills per bale per day until the cotton is taken out of storage. The warehouse allows a period of three working days on arrival without charge. The receiving charge of 15¢ a bale is taxed immediately upon arrival. That covers the services of inspecting for conditions, furnishing tags and tagging, furnishing tag sheets, showing country marks, and tag and initial warehouse receipt. It includes also ranging and unloading from cars or barges and drays. The sampling and grading is performed by the Cotton Exchange or the storer's own representative. That operation is separate and distinct from any service rendered by the warehouse (R. 839). The receiving charge places the cotton in the store room. It is stored on the side, bale on top of bale. We do not report or ascertain the grade of any cotton. We seldom ever receive a request to store cotton according to lots or grade. Our principal storage is storing the bales in one compartment in one pile. When we receive orders to further handle that cotton, they generally indicate that a certain number of bales by tag number are to go out to a certain ship (R. 840). If that cotton is not compressed by the compress, we make a charge of 25¢ a bale for delivery to the ships at all wharves served by the Public Belt. If the cotton were to be delivered to a ship at a dock adjacent to the cotton warehouse, we make a charge of 15¢ per bale for delivery. If it were to go out for line movement and we were requested

to load it in the cars, we would make a charge of 10¢ per [fol. 282] bale if we had not compressed it. If it had to be delivered to drays for movement by dray, the shipper paying the cost of drayage, we make a charge of 10¢ per bale, the same as if it were to be loaded into cars for line movement (R. 841). No charge is made for loading cotton in cars for line movement or delivery to city front wharves, or delivery to our own wharf facility, where we enjoy the compression. A charge of 10¢ per bale is made for delivery to dray even though we earn compression, because we are in position to either dray the cotton or make delivery by cars ourselves. The charge made by the New Orleans Cotton Exchange for sampling, grading, and billing, depends on the manner in which the cotton is handled; those charges are enumerated in our tariff for the information of the cotton warehouse storers, and the information shown there is accurate to the best of my knowledge. Exhibit A-31 is a copy of Public Warehouse Tariff #9 and Supplement #1, and it gives that information (R. 842).

The records of the Public Cotton Warehouse are so maintained that it could be easily determined by an Inspector of the Railroad what cotton was transit cotton as distinguished from cotton which was merchandised at the facility. We maintain separate records for each. When we perform the service of compression and make delivery to city front facilities other than at the wharf adjacent to the Public Cotton Warehouse, that delivery is made in cars via the Public Belt, or by drays. In either event the warehouse bears that expense. It does not bear the expense of the tollage charge for making such deliveries; that expense is evidently borne by the cotton (R. 843). The Steamship Company collects all storage direct from the shipper, and makes payment direct to the Board. When we elect to dray cotton instead of switching, we have the same expense as any ordinary drayman. Our records show that we can haul cotton to the city front wharves for about 20¢ per bale, with our own trucks; we do not engage draymen to perform that service, except in isolated cases. We switch cars to the docks. The cotton which moves over the wharf adjacent to the Public [fol. 283] Warehouse is handled by motor trucks and trailers (R. 844). This wharf is about 1300 feet long. We may have ships receiving in berth 6, and may have them receiving

any where along the wharf, from berth 1 to berth 6. The length of the haul from the different points of storage to the wharf, ranges from 1,000 to 4,000 feet. It is not the practice of the Public Cotton Warehouse to store cotton in the wharf house. They store only general cargoes there. The Steamship Companies accept delivery of cotton in that wharf, if they make arrangements with the Dock Board to have their boat there. Before cotton is delivered to the wharf to any boat, they must make an application for the berth for the boat (R. 845). That practice has been uniformly followed since I have been connected with the warehouse. I know of no exception since January, 1922.

Cross-examination:

The expense of trucking cotton by electric truck from the various points in the plant to the wharf house is somewhere around 7½¢ to 10¢ per bale (R. 846). That figure includes overhead expense, but not interest on the investment in facilities used in the warehouse. We have no figures on the latter; but if included, it would make the figure materially greater. Transit cotton is cotton that merely comes in the warehouse for the purpose of being compressed, and goes out in practically the same form as it is received in. It would be switched to a place convenient to the compress, run through the compress and loaded again to the car and shipped out (R. 847). If a shipper in Shreveport assembles his cotton there, compresses it, and concentrates it into even running grades, ready to go to the ship, then ships 100 bales of that cotton to our facility to be loaded to the ship, and if we know in advance that it is not going to be held in storage, we would put it on one of those warehouses, L, H or G, which is adjacent to the wharf so that the cotton would be moved out to the wharf. Unless we had instructions in advance to deliver it to the ship, we would have to put it in storage (R. 848). If the cotton comes in even running lots [fol. 284] and is in condition to be delivered to the ship, it would not have any business at the warehouse; the car would be placed adjacent to the warehouse and unloaded by the railroad company; the warehouse would not handle it at all. The wharf house would be the facility through which that cotton is handled, just as any other city front wharf. We have jurisdiction over the wharf house; we do not make a

charge to anybody for the use of the wharf house in transferring that cotton from the railroad track to the shipside; that is handled as a wharfage and as a shedage and a (R. 849) tollage fee. The wharf house is operated separate and distinct from the warehouse. I do not know whether that cotton would pay the shipside rate coming to the wharf house. Cotton that has been assembled and is ready for export and in even running grades, which comes in as standard density with instructions that we compress it to high density, and deliver it to the ship, would be unloaded convenient to the compress. It would then in like manner be moved direct to the wharfhouse if the ship was ready to receive it. There is no difficulty in keeping a separate record of that cotton from cotton that is merchandised in that facility (R. 850). Our records would show that that cotton was only served by having it compressed to high density and delivered to the ship. We handle isolated shipments of that character, but not many. The greater part of the cotton handled by us is handled for merchants who really make use of this facility for grading and concentrating their cotton. The cotton belonging to any particular merchant would generally be in one unit. In loading a ship we would simply load cotton from whatever unit the cotton for that ship would happen to be in. If our facility were larger, a longer service in getting to the ship would be involved. The 20¢ per bale cost of drayage covers only the actual cost of the operation; our drayage is confined to only short hauls (R. 851). Including the warehouse and the wharfhouse, that facility costs approximately $6,500,000.00; it is the property of the state of Louisiana. Between 20% and 21% of the cotton which is handled at *at* [fol. 285] the Public Cotton Warehouse moved over the wharf adjacent to it last season. There was nothing unusual about last season; that is a good average. All of the Steamship Lines do not call at the wharf adjacent to the Public Cotton Warehouse; the lines that operate regularly on that wharf to known countries to which cotton moves are the Tampa Inter-Ocean, the Straughn Shipping Company, the Isthmian and Norton Lilly and Company. Norton Lilly does not have assigned berths, but invariably coming in with inbound cargoes justifies them taking outbound cargoes. The Dock Board has a rule requiring

Steamship companies to shift berths for 500 bales, but as the rule works a hardship on many Steamship Companies it has never been rigidly enforced. They do or do not, according to their convenience. The present basis for charges for everything on which the compress undertakes to make delivery to shipside, exclusive of tollage charge, is of rather recent date (R. 853). The practice was inaugurated to meet competitive conditions existing principally at Gulf Ports, mainly at Galveston. I did not know that the practice was in force at Houston. The wharfhouse is 180 ft. wide; there is an apron of about 150 feet, and that would make it about 150 feet from the edge of the apron to the edge of the farthest part of the wharf. The Steamship Agents sign for the cotton in that warehouse. In former years they did store some cotton in the warehouses when they had an accumulation (R. 854). There is a first and a second story; the Steamship Agents sign for the cotton upstairs, and they bear the expense of putting it aboard ship. The wharfhouse is about 1,300 feet long. The fact that only 20% of the cotton handled through the warehouse last year, was delivered direct to the wharf adjacent to the warehouse, was not due to the fact that it was moved all rail to the southeast or somewhere else. Lots of cotton was delivered at City Front Wharves. Usually we send cotton to the Southern Pacific Steamship Lines in cars; some small lots we dray (R. 855). We handle some standard compressed cotton to shipside from our wharf facilities and charge 25¢ per bale for it, where we do not earn the compression. When we deliver it to our wharf adja- [fol. 286] cent to the warehouse, we charge 25¢ per bale if we do not compress it. The boats will call at this warehouse when they have a sufficient number of bales of cotton to justify them in calling, 500 bales and over. Some of the berths are regularly assigned and naturally they will take whatever they get, it might be only 100 bales (R. 856). This wharfhouse is operated in exactly the same manner as all other wharf facilities that have covered sheds, by the Board of Commissioners; it has the same charges and the same rules and regulations. The only difference is that it is double decked. We compress about 60% of our receipts; that includes the flat and the standard. About 40% of the cotton that moves through this

warehouse moves for export, standard compressed bales. My previous experience at handling cotton was on the railroad. I have only been with the warehouse since 1922 (R. 857).

WITNESS RALSTON F. GREEN

I have been for the past four years, Superintendent of the Union Compress Company, Inc., the sotck of which is owned almost exclusively by the firm of Harriss, Irby & Vose, and for three years prior to that I was connected with the Public Cotton Warehouse as a clerk in charge of one of the sections. The Union Compress Company is one of the so-called City Compresses, and is representative of the other so-called City Compresses; the same schedules of charges operate at those Compresses (R. 861). The firm of Harriss, Irby & Vose are cotton exporters; they are the principal customers of the Union Compress Company. We also handle other accounts, any other we can get. That is generally true of all the City Compresses. I have seen Exhibit A-15 of Mr. Gillespie's which details the manner of handling concentrated cotton at the Turning Basin Plant of the Weatherford Crump Company at Houston, Texas; the method of handling therein indicated is almost identical with the method of handling used by Harriss, Irby & Vose at the Union Compress Company, and it is also applied as far as possible to any customer who desires [fol. 287] that character of service (R. 862). It is seldom that we have a customer to sell cotton by tags on the bales, but we do do it; we prefer not to. The general practice is to store the customer's cotton in even running lots and bales. The Union Compress and the other City Compresses, where they earn compression, absorb the expense of delivery to City Front Docks. When we make such deliveries, the great bulk of it is handled by dray. We prefer to handle it by dray, because it is economically cheaper. We make a contract with a drayman to furnish us with sufficient drayage to operate the business. We pay them a certain price per bale; we have exclusive jurisdiction over the cotton, but their men do the work. The cost is 25¢ per bale. It is the uniform price contracted for where we

earn the (R. 863) compression. Where we do not earn the compression, there is a different rate; it ranges from 25¢ to 40¢, and in the case of the Alamo Warehouse it is 55¢. The charges for the various services under the tariffs operated by the City Compresses are substantially the same as those operated by the Public Cotton Warehouse with one or two exceptions. The storage per day in the City Compress is 1¢ per bale per day, at the Cotton Compress it is 7/10¢ per day; the delivery to the cotton wharf on cotton not compressed by the Cotton Warehouse is 15¢ per bale, while with us, we having no adjacent wharf, our delivery charge is necessarily higher (R. 864). Our delivery charge to the wharf adjacent to the Public Cotton Warehouse would be the same as the charge to any other City Front Wharf where we earned the compression.

(Green's Exhibit A-32, a tariff of the charges operated by the so-called City Compresses and Warehouses effective August 1, 1923, was received in evidence.)

Sampling, tagging, and weighing of cotton, is performed by the New Orleans Cotton Exchange on an agreement entered into by the Cotton Exchange and the Cotton Merchants. The grading is done exclusively by graders employed by the firms themselves. In the case of the Union Compress Company, which is operating under a Federal License, our grader having a thorough federal license to [fol. 288] grade cotton, is entitled to place the grade of that cotton on the warehouse sheet. That is exclusively a feature of the Union Compress Company, however, due to its being under federal license not enjoyed by other compresses. Consequently the grading of cotton is in no cases done by the other (R. 865) compresses. The practice of absorbing the expense of delivery to shipside where compression is earned began the 1st of August; it was done to meet competition at other ports, Galveston in particular.

Cross-examination:

Out of the flat charge that we make for compressing and delivering cotton to shipside, we make nothing out of the drayage charge. The effect of it is that we are compressing cotton for 50¢ per bale. We keep our records so that we can show separately the transit cotton from the cotton upon

which we perform concentration service (R. 866). That is presumed to be done by all the compresses.

WITNESS H. JEPPERSON

I am Vice-President and General Manager of the New Orleans Compress Company, Inc. That facility is located at Shrewsbury. It is not adjacent to the river. The movement of cotton to the waterfront is accomplished either by switch movement or by drayage. Anderson Clayton & Company owns the controlling interest in that facility. We handle cotton for other parties besides Anderson Clayton & Company (R. 867). It is operated as a public facility and available to anyone who desires to do business there, in all respects the same as the Public Cotton Warehouse and so-called City Compresses. I have seen Exhibit A-15, introduced by Witness Gillespie, outlining the method of handling cotton in the Turning Basin Plant of Weatherford Crump & Company in Houston; the method of handling cotton there as practised by New Orleans Compress Companies substantially, is the same as that practiced by Anderson Clayton & Company on its cotton. Some of the customers' cotton is handled in like manner; other custom-[fol. 289] ers have a little different handling, some is handled by what we term tag numbers. Anderson Clayton's Cotton is graded and marked. One of our particular customers, grades and marks his cotton in lots of 50 and we set it back in lots of 50. The other customer sets it back in grade sheets and orders it out by tag numbers as he sees fit. We store the latter customer's cotton by tag numbers and not in even running lots and grade marks. That is usually because the customer does not have a sufficient amount of cotton out in sufficient time to set it back by grade marks. As a compress, we would prefer to do that. The tariff which we operate at the New Orleans Compress Company is substantially the same as that of the Public Cotton Warehouse, and so-called City Compresses at New Orleans. I think there is a little difference between the storage rate between the City Compresses and our Compress. We operate the 7/10¢ per bale per day, like the Public Warehouse; We also effect delivery to shipside where we earn

the compression (R. 869). We make that delivery as a rule by railroad car. It is more economical to do that than to dray it. The drayage charge per bale from the plant of the New Orleans Compress Company to the so-called City Front is 70¢ per bale. When we switch, it costs about 23¢ to 25¢, depending on the location. That includes the cost of loading it to the cars where we do the compressing. If we do not do the compression, we charge that in; when we do not earn compression, we undertake to effect delivery at a charge of 25¢ per bale; we are forced to do that where we have to meet competition (R. 870). It is less than our actual expense of accomplishing that delivery. Our plant is about one-half mile from the water front; we have no cotton moving out from that compress by water without switch or dray movement. There are no dock facilities on the water front half a mile removed from our plant. The Public Cotton Warehouse is the nearest dock facility from our plant—about six miles (R. 871). The practice of absorbing the expense of delivery to shipside, where compression was earned, was inaugurated by our company on [fol. 290] August 1st, 1923; prior to that time we had not undertaken to absorb that expense. We met it for purely competitive reasons.

Cross-examination:

We make a charge for concentration, which does not include the cost of delivering the cotton to the car. The charge for delivery to the car is absorbed in the 25¢ switching; delivery to the car for domestic points would be 10¢, just as where the cotton moves under the dray service (R. 872). In order to meet the competition of other compresses, we load the cotton into the car, pay the switching and pay for the unloading at shipside. On cotton that goes through and is compressed, we absorb that; we make a charge of 25¢ on cotton that we do not compress that is delivered to shipside. It covers the loading, the switching charge and the unloading at shipside. I do not know whether or not there is in the tariff a charge of 10¢ per bale for loading into cars in addition to the 25¢ switching charge when cotton is not compressed by our plant. We do not charge 35¢ (R. 873). Our records are so kept that one can easily ascertain which cotton is transit cotton and which cotton has been

rendered warehousing and concentration service by our press; we do not issue warehouse receipts on compress in transit cotton. Cotton may be delivered to the depot or railroad facilities that are situated near the river front, such as the Illinois Central warehouse, by the cotton shipper himself. When cotton is received in the storehouse of the Illinois Central warehouse, it can be handled from there to shipside identically as at any compress, with the exception of compressing. It can be trucked from their storehouse to shipside by hand truck, but they use motor trucks because it is quicker, or cars (R. 874). The shipper can have that cotton sampled and graded while it is in the Illinois Central warehouse adjacent to shipside; he can perform any service he wants to except compressing. When they move it out from their storehouse to shipside, their charge is 5¢ per 100 lbs. or 25¢ per bale, the difference be- [fol. 291] tween the depot rate and the shipside rate. The cost of trucking cotton from our warehouse and delivering it to the dray or to the railroad cars, for which we charge 10¢ per bale, where we do not perform the compressing, would be there whether we absorb it or not, since we would have to perform the service. I do not know what the exact cost is; it varies according to the distance of the haul. If you have a warehouse 1,000 or 1,200 feet long, and happen to have (R. 875) a bale near the end, it wouldn't cost as much as if you took that from one end to the other. On the average, it costs at least 10¢ per bale. I do not know whether our firm contemplates erecting dock facilities near to or adjacent to the warehouse.

WITNESS E. E. BOWMAN

I am with Stewart Bros., Cotton Company, Inc.; we are shippers to domestic mills and exporters. We concentrate all cotton that we have coming to New Orleans. We handle cotton at other points as well (R. 876). All the cotton that we concentrate here is tagged and merchandised; we store it by tag numbers. Each interior shipping mark purchased through a factor is merchandised and then the cotton is stocked according to the bale. We assemble the different bales according to tags, and the stock records (R. 877).

From our records, we know instantly how many bales of the given lot and staple we have, after it is re-classed. Probably two or three per cent of our cotton is not merchandised; that part may be handled at the railroad. It comes into the railroad on a local bill of lading, and is there classed and graded and forwarded to shipside, at least a part of it is and the remaining portion is stored. It would be stored in compresses. We handle that small percentage so that if we need a few bales to complete a mark, we would have it, but most of the time it is handled through the warehouse proper (R. 878). We have had some from eastern territory, but not from western territory, handled by the I. C. on the shipside rate, but the portion which we handled [fol. 292] at the railroad we elect to dray ourselves from the railroad depot to shipside. We do not know what disposition we are going to make of that cotton until after we have determined its class, and they charge the domestic rate.

Cross-examination:

The even running grades are kept in a stock record in our office, but the cotton in those even running grades (R. 879), say a 50 bale lot, may be taken from 45 different shipments. We have to get it physically in order when we ship it out. We do not own a warehouse; we concentrate the greater portion at the Dock Board warehouse; we seldom use other facilities. The exporter buys from the interior merchant, the warehouse, or he may have his Agent in the interior. The practice of a producer being the shipper into New Orleans is not generally followed with us (R. 880). In New Orleans as a whole, the cotton is assembled by factors, which has always been a business of some considerable importance.

WITNESS RALSTON F. GREEN RECALLED

When we do not earn the compression we assess against the shipper the cost of trucking cotton from points in our warehouse to the drays. There is a certain volume of work attached to assembling of the various marks into the block lots for the shipper who chooses to have his cotton drayed out in its original condition as received by us

(R. 881). In that instance, we charge him 10¢ per bale for that labor. The cost is about 7, 8 or 9¢. It embraces the actual labor of segregating the cotton in marks or in single numbers or in lots as ordered by the shipper, the clerical work and delivering to the drayman and the necessary supervision of the plant. We attribute 5¢ per bale of that charge to the labor of trucking.

WITNESS F. COCKRELL

I represent Anderson Clayton in the eastern states, for the south Atlantic States (R. 882). I have been in the cot-
[fol. 293] ton business about 25 years and have been in Savannah, Ga., for the past 7 years, in charge of the buying and selling and assembling of cotton for the Anderson Clayton & Company moving through Savannah. I am familiar in a general way with the method of handling cotton in Savannah. There are cotton warehouses in Savannah located adjacent to the water front and also some located back of the water front. The Steamers come to Savannah and tie up at one of the railroad terminals, usually certain Steamship Lines have certain terminals, and whatever cotton that is on that particular terminal is trucked to the ship either by handtruck or electric truck (R. 883), and the balance is trucked from the other terminals to what is known as the lighter berths of the other terminals and lightered up there. From the compresses back of the water front, the cotton is drayed to the water front, what is known as lighter berths and from there is lightered on up to the steamer. Cotton coming into the various warehouses, whether adjacent to the water or back of the water, pays the local Savannah rate. If it is handled off to shipside by the railroads, or over the railroad facilities, an additional charge of 25¢ per bale, or 5¢ per 100 lbs., is made. The shipper receiving cotton there in the warehouse and concentrating it, can surrender his receipts and handle the cotton in any manner he wants to. In taking the cotton from one warehouse located on the water, the cost to the cotton shipper of getting that cotton out of the warehouse, putting it on the lighter and taking it to shipside is usually 15¢ per bale. From the warehouse to the

lighter berth, and then 15¢ a bale from the lighter berth onto the Steamer where the compress does not perform the service of compression. I am familiar with the general plan and location of the Savannah Compress and Warehouse Company. I am also familiar with the location of the Long Reach plant of the Houston Compress Company at Houston. Their locations are exactly the same; they are both on the river front and have their own wharf property. At the Savannah Compress and Warehouse Company, there are warehouse compartments at which cotton is concen- [fol. 294] trated; they are back from the river, some of them. Cotton from those warehouse compartments is discharged at the local rate into Savannah, and then a charge of 15¢ per bale (R. 885) is made by the Compress Company for trucking from these back of the water warehouses to the lighter berth, and then the lighter charge is 15¢ per bale from there on.

At Charleston, there are three big warehouses and Compress Companies owned by three separate corporations, each corporation being owned by a firm of cotton dealers, and they are all located on the river. The river at Charleston is very wide—almost a bay. There are also railroad terminals as at Savannah, each of these being located on the water front, and the Steamer usually comes in to load at the plant having the most cotton to give her and the balance is lightered up to the Steamer unless there is sufficient to justify their moving it. Each of these three warehouses located at waterside is equipped also with a compress for high density. They handle cotton for other cotton merchants than the merchants who own the compress companies (R. 886). Our company has shipped cotton through those facilities; cotton is concentrated in their warehouses just as it is in the warehouses back of the waterfront, and they make a charge for delivering at shipside. They pay the local rate into the warehouses at Charleston (R. 887). The same situation exists at Wilmington, and at Norfolk. Various concerns own the Savannah Compress and Warehouse Company; no one concern owns the controlling interest (R. 889). Other cotton firms and steamship agents are interested.

Cross-examination:

I would not say whether or not there is a movement of cotton from the southwest to Savannah; there has been in the past, in the last few years, but it has been very small. The same applies to Oklahoma. Ships do not dock at the Savannah Compress & Warehouse Company facilities; all [fol. 295] cotton from there is lightered. When the compress was built about eight years ago, the Central *and* Georgia Railway had spent several (R. 890) million dollars on a brand new terminal, and before they would put in their switching facilities into the new plant, they required an agreement not to load Steamers there, which agreement does not expire for two years more; when it does, in all probability Steamers will load there. There are no railroad facilities at Wilmington.

WITNESS T. HUGH CURLEY

I am Chief Clerk to Mr. H. L. Graham, of the Louisiana Railway and Navigation Company; I have been with that railroad about 14 years (R. 891). There are two rates to New Orleans, one which applies for shipside delivery and the other for depot delivery. If the way bill shows for export, we assess the export rate, and if there isn't anything on the way bill to indicate, our advance orders would indicate the movement of the car whether we are going to unload it or what disposition is going to be made of it, and we have it arranged in our office that if the shipment does not indicate what disposition is going to be made when the order comes to the billing clerk, he will tell us that that car is going to be ordered to shipside, then we will investigate the rate and see whether it will take the export or the domestic rate. That applies to carload shipments. On less [fol. 296] than carload shipments, unless the way-bill indicates that shipment is for export, we assess the domestic (R. 892) rate on it. Then if we are called upon to make shipside delivery we then investigate the rate as to whether there will be any changes, or additional charges for shipside delivery. If we find that the shipment is to be ex-

ported, we assess the export rate. If it should be from a point where the rate includes shipside delivery, there would not be any charges. The origin of the instruction on the way-bill is the bill-of-lading which the shipper himself makes out.

Cross-examination (R. 893):

I would say that 75 per cent of the cotton originating in Louisiana moves into New Orleans on the Domestic rate, the intrastate rate. In some instances the intrastate and the interstate rates are the same, in some they are not. On the rate from Shreveport, while there is an I. C. C. number of the 70½¢ rate, there is another tariff that defines specifically that this tariff should apply on intrastate shipments of 74½¢. There is no doubt that (R. 894) tariff may be intended to take care of export shipments, but it does not say so. I know of only two different rates and two different routes from Shreveport to New Orleans.

WITNESS J. D. WEBB

I am foreign freight agent for the Texas and Pacific Railway. The export rates in all cases is collected on cotton on the bill-of-lading which is the shipping document or way-bill. The information on the waybill or bill-of-lading, if there is any evidence of exportation or de-[fol. 297] livery order indicating exportation, the export rate is assessed. If not the domestic rate is assessed, whether it is one bale or one hundred bales. There is quite a good deal of cotton unloaded from railway terminals by the Railways and ranged and handled from terminals to compress warehouses and shipside. Wherever a bale of cotton is unloaded there and is ordered to shipside, we immediately raise the rate to the export rate if it has already (R. 895) been delivered on the domestic basis. That class is getting less each year; I think last year we had some 25,000 or 30,000 bales handled that way, but it was not all export.

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Supreme Court of the United States

OCTOBER TERM, 1928 29

No. 612 19

ALEXANDER SPRUNT & SON, INC.; ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

FILED DECEMBER 31, 1928

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WITNESS W. H. STAKELUM

I am Assistant General Freight Agent, Southern Pacific Lines in Louisiana. I endorse the testimony of Mr. Curley and Mr. Webb with reference to methods of handling at New Orleans, insofar as the application of the rates on domestic and export cotton are concerned. If any evidence of exportation is shown, the export rates are protected. If domestic delivery is made, the domestic rate is assessed. Our rates are applied to depot. Under our terminal tariff, we will switch cotton to the different warehouses in New Orleans, but if there is any evidence showing that this cotton is going for export the export rates are protected. If it is domestic or for storage or for any domestic purpose, the domestic rate is assessed. If the export rate is assessed, we have to deliver the cotton to shipside, if we have already delivered it and switched it for domestic movement and if later it is sold for export and exported, we would not assess an export rate unless a concentration claim were filed. I should say that the percentage of our total movement on [fol. 298] which we changed the rate from domestic to the export rate is comparatively small (R. 897). I think that Mr. Curley's estimate of the amount of cotton moving in [fol. 299] on local bills-of-lading from Louisiana points, 75 per cent, is possibly correct (R. 898).

WITNESS HENRY LAMPE

I am Assistant Manager of Harris, Irby & Vose, at New Orleans. I have been in the cotton business fifteen years, in buying and selling. From my experience, I consider 18¢ a bale a big factor in the profit for the exporter in the legitimate business. I am directly in touch with the selling of cotton in foreign markets. I handled that business for the account of Harris, Irby & Vose (R. 899). I receive cablegrams from our agents in Europe giving quotations of our competitors. I find that Anderson, Clayton & Company are our principal competitors; they are the lowest competitors in the foreign market, more so than any other large firm.

Cross-examination:

We have small firms that are also competing in the foreign market. Sometimes we find that a small firm will be the low bidder (R. 900). We seldom compete with McFadden or find them in line with us; we are usually lower. We find that Anderson, Clayton & Company are the lowest bidders in most cases. I do not have with me information about the price, the terms, the place, etc. showing a comparison between the offers of Anderson, Clayton & Company and of Harris, Irby & Vose on the same day; but I could get it without searching very long (R. 901). If our firm is placed at a disadvantage of 18¢ a bale and has to continue through the season's business at that disadvantage, we would be damaged to that extent due to the fact that [fol. 300] we are meeting competition.

WITNESS M. T. SPRAGUE

I am Commercial Secretary of the Chamber of Commerce of Mobile (R. 903). Mobile is not directly concerned as to whether this allowance should be granted or not, but we are concerned in that if it should be granted we want Mobile placed on a parity. At present we do not do a very large business of export cotton through the territory West of the Mississippi. In Louisiana and Texas we don't have any chance at all. In Oklahoma we are working for business right now through the I. C. C. In Arkansas and Missouri we get an equalization with New Orleans right now. In the territory around Memphis, along in Mississippi, our rates are equal, and in the Southeastern territory our rates are 5¢ less than New Orleans. If New Orleans is permitted to absorb this freight, it places Mobile on a parity with New Orleans as far as the Southeastern territory is concerned, when we ought to have a 5¢ advantage, the rates being 5¢ lower. On cotton shipments originating in Mississippi and up as far as Memphis, we now have an equalization of rates; it amounts to a differential of 5¢ in favor of New Orleans if they are granted that privilege. In the Texas territory it does not make so much difference but in (R. 904) the Oklahoma territory we have to reach and in the Arkansas territory we have some points now which are equalized.

Therefore, if the privilege is granted at New Orleans, it should be granted at Mobile, because we are competitors in certain territory. We have no water-front warehouses at Mobile. There are two high density compresses and one standard compress at Mobile, all situated back from the water-front (R. 905).

[fol. 301] WITNESS E. R. THORNTON

In regard to the 22¢ drayage allowance at Galveston, over a year ago I took up with the Galveston line (R. 906) this question and told them they had our permission to reduce the allowance to 20¢ per bale. We of Galveston are perfectly willing to make that reduction if the cost of draying was reduced to 20¢ a bale.

Cross-examination:

I do not know of any cotton shipper that put in a claim for 22¢ a bale drayage when it actually cost him less than 22¢ to perform the service. That would be wrong and should be corrected. In my opinion the tariff requires that the shipper present the drayage receipt covering the actual cost of drayage. I do not know of anybody that gets the benefit of the allowance. I think the railroads can stop it under the present tariff.

Narrative of the Proceedings Before the Interstate Commerce Commission, Docket 14940, Application of Rate on Cotton to Gulf Port; Docket 13991, Weatherford, Crump & Company versus Abilene & Southern Railway Company et al.; Docket 11965, Galveston Commercial Association et al. versus Alabama and Vicksburgh Railway Company et al., at Houston, Texas, April 26th, 1928

STATEMENT OF EXAMINER

Examiner Money: It is my understanding briefly that these proceedings have been reopened to inquire what services are accorded and what charges, payments or allowances are made by carriers in connection with the handling of

cotton at interior points, including the payment for compression, whether any such services, charges, payments or allowance result or may result in unjust discrimination or undue prejudice or preference or otherwise violate any of the provisions of the Interstate Commerce Act, and what changes if any, should be made in such services, charges, [fol. 302] payments or allowances and whether the findings in these proceedings shall be extended to any port in Texas, Louisiana or Alabama, other than the ports specified in the original order of the investigation, and to determine whether conditions exist at this time which were not fully developed during the previous hearing, or whether any changes have since taken place that would justify any modification of the finding of the Commission in rates on cotton to Gulf Ports, 100 I. C. C. 159 and the order entered in 14940 and 13991 and findings and the order of the Commission.

WITNESS B. M. BLOOMFIELD

I am connected with Lykes Brothers-Ripley Steamship Co. and with Daniel Ripley & Co. These Steamship Companies serve ports in Germany, Holland, Spain, France, Belgium and the far East, West Indies, and Hayti. I am [fol. 303] General Manager and Vice-President of these companies. My Line handles about 25 per cent. of the export from Houston. I have been in the present position three years (R. 935). The Lines I represent receive cargo in one berth at the Long Reach Docks and the Ship Channel Company's warehouses in Houston; we do not shift our ships at either facility. They are not shifted by anyone else. There has not been shifting of our ships during the past season or the present season. I would know if there had been. Our Company does not sign for cotton all over the premises of the Houston Compress Company or the Long Reach facility. (R. 937.) The cotton must be in a berth that is allocated to us on our platform by the Houston Compress Company before we sign for it. It must be in a covered shed in the ship's space, which is entirely separate from the warehouse. I would say that the space in which we assemble cargoes is about 60 or 66 feet by 360 or 400 feet. The 400 feet parallels the ship. We did

not sign for cotton within the warehouse, and have not been asked to do so recently at all events. We have not paid for handling the cotton from the warehouse to our ship. The operators of the Houston Compress Company put the cotton in the berthing space.

Cross-examination:

On cotton that is delivered to the Lykes-Ripley Steamship Co. at the municipal wharfs at Houston, we receipt for that cotton in the warehouse in the pier that the Port Commission assigns to us. (R. 939.) We would term a warehouse a covered shed on the pier. There is a warehouse attached to the piers; we receipt for cotton delivered to our Company in that warehouse. We require that the cargo be within 200 feet of the ship's tackle, if it is cotton; on general cargo we require 150 feet. That is the general practice at Houston and Galveston. (R. 940.) It occasionally happens that when cargo is scarce and the ship needs cargo, that one of our vessels will call at the Long Reach warehouse for cotton and have delivered to it a certain portion of cotton and then have to shift the vessel to Alexander, Sprunt & Son or to the Municipal Warehouse [fol. 304] of Houston and then come back to the same Long Reach warehouses for additional cotton. It is the general practice to shift the vessel from the Long Reach plant of the Houston Compress Company to Alexander Sprunt & Son's shipside warehouse for cotton. We receipt for cotton inside of what is termed the shipside warehouse of Alexander, Sprunt & Son, in the space controlled by the steamship agent. (R. 941.) The Houston Compress Company assigns us the berth space in advance of the arrival of the vessel. The Houston Compress Company also solicits and handles other export commodities through the same warehouse. I believe our Company handles about as much flour as any other steamship company operating out of Texas ports. We might receipt for flour inside the Houston Compress plant; I don't think we do, but it could be arranged. If it were within 150 feet of the ship, I see no reason why it could not be receipted for there. With respect to flour, I would say that it would not be necessary that it be placed in the space assigned that steamship agent before it was receipted for. (R. 942). As long as it was

alongside the water front and did not cost us anything extra to truck it to the ship, it would be allright with us. The difference between cotton and flour is due to the fact that the Liverpool Cotton Conference Bill-of-Lading Committee, which exercises very rigid supervision over cotton bills-of-lading, requires steamship agents to sign an agreement that they will not handle cotton by signing bills-of-lading for it unless it is within the space controlled by a steamship agent alongside the ship. The Houston Compress Company determines what space shall be in our control; they allocate it to us. (R. 943.) The Liverpool Bill-of-Lading Conference has never questioned a bill-of-lading issued by the steamship company for cotton delivered to us in the warehouses controlled by the City of Houston at the Municipal piers. If the Houston Compress Company should allocate to us a certain place within the warehouse [fol. 305] within 200 feet of the ship, I know of no reason why our company would not receipt for cotton in that particular space. Shifting means taking a vessel from one point to another point within the same harbor; on rare occasions we have had vessels which shifted in the harbor of Houston as many as five times; I dare say that has occurred during the past shipping season. Our company handles some import cargo for delivery through this same Long Reach plant. (R. 944.) The steamship company will unload that cargo from the ship and deliver it within this warehouse at the ship's cost, trucking it just as short a distance as possible. In most instances it is put on cars alongside ship at the plant. On some commodities, imported ties, for instance, we would truck it 150 feet from the ship at the ship's cost. (R. 945.) Since the finding of the Commission that delivery to waterfront warehouses or compresses is not delivery at shipside, but that it must be handtrucked at Houston and hand-trucked or drayed at Galveston after merchandising and compressing, this change has taken place to my knowledge, two or possibly three years ago we used to receipt for cotton at the Long Reach plant further away from the ships than we do now. We never have any contention with Anderson & Clayton about whether cotton is within 200 feet of the ship's tackle. I do not know what brought about the change that occurred two years ago (R. 947). 200 feet of the ship's tackle

means within 200 feet of the shipside; if the cargo is not in that distance, the stevedore would want more money for handling which the ship would pay. (R. 948.)

If a vessel picks up 2000 bales at the Long Reach plant and then shifts to Alexander, Sprunt's shipside warehouse [fol. 306] and picks up 2000 bales, when it is brought back to the Long Reach plant, it is not necessary that it be assigned the same identical berth that it had before it went to Alexander, Sprunt & Son (R. 949). By the term warehouse, the steamship man means any covered pier at which the ship might tie up (R. 950). The steamship agent must [fol. 307] accept cotton within 200 feet of the ship, reserving our rights in connection with taking it in an uncovered space. I am familiar with the warehouse of Weatherford, Crump & Company; there is a special arrangement whereby the steamship agent will accept cotton at a particular part of that warehouse and then later the cotton will be transported closer to the ship. The space on the dock is not enough to accommodate all the cargo and they give it to us in an adjoining warehouse right back of the pier. We receipt for the cotton in that warehouse back of the pier (R. 951). The operator of the pier, which is Weatherford, Crump & Company, trucks the cotton from that warehouse to the ship at their expense, delivering it within 200 feet of the ship. Alexander, Sprunt & Son's warehouse is more that 200 feet wide, I should say. It might be a little wider.

If the Houston Compress Company wanted us to, we would receive cotton 200 feet back from the ship side in the Long Reach plant and load it from there on board the ship at our own expense. Since the space allotted to us is about 60 feet in width, we would take it 140 feet further back than that space (R. 953). We would take it 500 feet back if some one would pay us the cost of extra trucking over 200 feet (R. 954). When the cargo is more than 200 feet away from the ship, it is customary to pay the laborers 5¢ a bale straight time for handling it. Somebody who put the cargo there by special agreement pays that charge; we would pay it in the first case and bill the people for whom we perform that service; (R. 955) we would collect that 5¢ from the shipper, and we would make no allowance for the trucking 200 feet from the shipside which we held ourselves out to perform. For over-time after hours the cost would be

7½¢ a bale. There are two berths at the Weatherford, Crump facility; the cotton is put within reach of the ship's tackle, within 200 feet, at the expense of the people that [fol. 308] operate the warehouse (R. 956). I think we could store 2000 or 3000 bales for cargo at the pier proper at one of those berths. If we only had a sufficient amount of cotton that could be stored on the pier, we would require that it be placed there. If there was more than could be placed upon the pier proper, we would sign a receipt for some which was not on the pier proper but in that part of the warehouse which had been assigned to us. A part of that part of the warehouse might be within 200 feet of the ship's tackle; I do not know the measurements. When it moves out of that warehouse onto the pier, it would be done by the operators of the port, it being their duty to put it on the pier. The Port Commission assigns a dock to us, a covered warehouse, and we control that space. As shippers engage cargo with us, they have permission to put it in that space as long as we have space; that space is under our control. There is an apron there which is uncovered, I do not know its exact width (R. 958), maybe 20 or 30 feet. In order to assemble our cargo, it is necessary for us to have a certain space within the covered part which we call a warehouse. The space where our cargo is assembled while the berth is being used by the ship is absolutely controlled by us. The cargo is put within that space from another point at the expense of the owner of the goods. It is taken from within that space in the Municipal wharf and placed in the ship at the expense of the ship. At the Houston Compress Company, there is a part of their wharf which is uncovered and a part covered (R. 959). When the facility was first constructed, there was a much wider uncovered space. There has always been an open space there next to the ship. Adjoining that and as a part of the berth space, there is now a covered wharf space (R. 960). No part of the covered wharf space, to my knowledge, is used by the Houston Compress Company or by [fol. 309] the shippers of cotton as a warehouse. When that berth is assigned to our company adjacent to this covered space, the covered space is entirely within the control of our company. We require that the cargo be put within that space at the expense of the operator, the Com-

press Company or the shipper. If a part of the warehouse back of the covered wharf should be directly assigned to our Company and placed entirely within its control, our company would move cotton from that space to the ship without cost, provided it was within 200 feet; we would move it more than that by special arrangement; if it was 1000 feet, we might get more than 5¢ a bale (R. 961). To a steamship man, anything is a warehouse as long as it has a dock with a shed on it. In speaking of a warehouse as the place where the owner of the goods stores his goods, not where he delivers it to the ship, our company does not receipt for any cotton at any time which is within that warehouse space so defined (R. 962). I would not say that the cotton has to be within the space set aside as a delivery space under the control of the steamship; it could be 500 feet away from the ship, providing that space was controlled by the steamer and the arrangement made for its trucking at the expense of the other fellow. We would pay 20¢ a bale for the labor of putting cotton into the ship within 200 feet, over 200 feet we pay them 5¢ a bale more (R. 963). We would go back of the 60 feet assigned to us at the Houston Compress Company to the extent of 200 feet at our own expense and put cotton on the ship; we have not yet done so. The space would have to be within our control; it could not be controlled by the Houston Compress Company and cotton taken by us there and receipted for. The Compress Company would have to abandon the use of that part of its facility as a place for storing cotton for cotton owners (R. 965). There is a solid wall between the space that we have designated here as the covered warehouse and the warehouse as used by the Houston Compress Company. The steamship requires that the cotton be placed within the most available part of the berth [fol. 310] if there is only a small part of the cargo; they would put it against the side of the warehouse that is closest to the ship for their own purposes, because they might have more cargo coming in later and they would not want it in their way (R. 966). I refer to that part of the warehouse which is covered and where we only receive cotton. I understand that the warehouse at Weatherford-Crump Company is owned by the Navigation Commission, which designates that portion of the warehouse where we receive the cotton as being our warehouse.

Tariff No. 7, "Stevedoring rates at all Texas Ports," issued by the Master Stevedor- Association of Texas, effective October 1st, 1925, approved by the Maritime Association, on Page 1, Item 9, we find: "Extra truck-ge will be charged at actual cost on all commodities as follows: general cargo, over 150 feet; cotton, over 200 feet, from hatch." That rule applies at Anderson, Clayton's Long Reach Warehouse, Alexander Sprunt & Son's Ship Warehouse, and all other shipside warehouses or piers or docks at Galveston, Houston and all other Texas ports (R. 968). You could store four, five, or six thousand bales in this space 66 feet wide and 300 feet long, I think. If only five thousand bales, and Mr. Clayton wanted to deliver another thousand bales just 30 feet beyond, say 230 feet from the ship, we would take the cotton and deliver it to the ship if it was in space controlled by us. We would bill Anderson, Clayton & Company for trucking the extra 30 feet five cents a bale (R. 969). We would bill it whether it cost that much or not. I do not recall collecting any items of that kind from Anderson, Clayton & Company. We are free to accept traffic at any place within the Municipal Warehouse. The Houston Compress Company really controls the limitation of the space allotted to us at the Long Reach [fol. 311] plant. That is also true of Alexander Sprunt & Son's Warehouse on the ship channel (R. 970). They could change it from day to day, if we had no cargo in there, but could not if we had cargo there or going there. They would not do it without notifying us. We would not object to their increasing the space; we are not allotted the same space in that pier all the time (R. 971).

WITNESS J. T. STOCKTON, JR.

I am manager of the Dock & Warehouse Department of the Houston Compress Company; I have a blue print which shows in general outline the Long Reach Plant of the Houston Compress Company, including the warehouses and wharf facilities. It is offered as Exhibit "A"-33. Beginning at the water's edge, the broken line is the United States harbor line. The distance from the water's edge to the heavy white line, which we term the dead line, which

separates the steamship berth from the warehouse storage compartment is 90 feet (R. 972). The distance from the dead line through and across the present room, Sections 1 to 10 inclusive, is 150 feet. The receiving platform is 67 feet wide; it is adjacent to Sections 1 to 10 inclusive marked as warehouse. There is another warehouse 68 feet wide separated by track No. 2. Track No. 1 serves the berth allocated to the steamship companies and is on our 20 foot apron, or uncovered platform. Track No. 2 serves the warehouse proper (973) where cotton is received from the interior by Anderson, Clayton & Co., or people who concentrate with them and is unloaded on this platform, weighed and other services performed to it for compression. Track No. 3 serves the warehouse for the same purpose as Track No. 2 serves the other warehouse. The dotted lines on either side of the heavy white line which [fol. 312] represents the dead line, are the trolley lines serving the shipside; all dotted lines are trolley lines. The [fol. 313] trolley is an overhead electrical conveyor system used for the handling of cotton from the warehouse or from cars to ship-berth; the usual method is for the cotton to be placed on the trolley, trollied around the platform into the ship's berth, unloaded therefrom and trucked into the space allocated for it by the ship clerk. The heavy white line termed the "dead line" is a two foot wall (R. 974). There is one door to each one of the sections, every 150 feet, and there is a door from the compartment in the large warehouse to the wharfhouse. The door in Compartment No. 4 is in the center of No. 4, 75 feet from each side, and so on. They are fire-proof rolling double doors. The wharf space, 90 feet wide, marked berth No. 1 and Berth No. 4 is part covered and part open, 20 feet open and 70 feet covered. The trolley line occupies 4 feet of the covered 70, making the 66 feet which has been previously referred to (R. 975). The employees of the Houston Compress Co. operate the trolley all around. The Houston Compress employees take the cotton off the trolley when it is in one of the berths and put it at points in the berths designated by the ship's clerk. The ship's clerk designates what part of the berth's space shall be used for each bill-of-lading lot. A bill-of-lading lot of 100 bales with a certain mark would be trollied to the berth allocated to the ship for which the

cotton was intended, then taken off the trolley and placed in the berth at the point designated by the steamship clerk, and this operation continued until the whole 100 bales had been placed out. We would get a receipt from the steamship agent after the 100 bale lot had been put out and tally-checked by the steamship clerk (R. 976). The steamship agent will not give a receipt when a part of it is put out. The steamships handle also bagging, ties, burlap, news-print paper, human hair, any export or import commodity that is handled thru the Port of Houston. When these commodities are brought in by vessels, they are [fol. 314] usually deposited in the berth, the 70 foot place which is allocated to them. Sometimes, in order to speed up, they deliver the cargo on truck only to the dead-line with their men and from that point I take the truck with my labor and place it in the storage compartment. That refers to newsprint paper principally (R. 977). The steamship agent in no instance deliver- commodities to our warehouse. The same is true on outbound commodities. No cotton is taken by the steamship agent in the warehouse. The lower part of this blue print is the second-floor plan.

Cross-examination:

We handle flour for export on Track No. 1 from the car into the berth allocation, or truck it from cars into the ship. We do not unload any commodities, including cotton, moving direct to the vessel from Track No. 2 (R. 978). Cotton switched to us by McFadden for movement direct to the ship is handled on Track No. 1 in all cases this past season. Last season we had a special track for it, track No. 3, which is now removed. Track No. 3 was located between the receiving platform and a special platform built for the handling of transit cotton which is not shown. I am not familiar with the method of handling a bale of cotton in Warehouse opposite Berth No. 4 in Section 9 to be delivered to a steamship agent with his vessel docked opposite Berth No. 4. I am in the dock, and the warehouse department delivers it to me in the ship's berth. There are two separate and distinct departments of the Houston Compress Company. I do not know how it is handled (R. 979). I see the cotton coming off the trolley, but where it comes from or how it is put on the trolley, I am not familiar with. I do know that

the general practice is to deliver cotton on the trolleys. In one case out of five or six hundred, it might be trucked. That custom could not be changed over night (R. 980). It is possible to hand-truck cotton from Section 9 to Berth 4; it is for the warehouse people to elect to handle it on a trolley instead of on a hand-truck (R. 981).

[fol. 315] There were formerly tracks 1, 2, 3 and 4. What is now track # 2 was track #3 and what is now track #3 was track #4; #2 has been eliminated (R. 982). It is a fact that all cotton moving in on an export bill of lading direct to ship, aside from cotton from warehouse to ship, including cotton like McFadden's, will switch down here, and ship over our wharf is unloaded from track #1, even though a ship is working at the same time. We use that track during the height of the season; it is the only track we have available for unloading steamship cotton. The space in the warehouse that we set aside for the storage of general cargo is section- 7, 8, 9, and 10.

A car load of flour from Wichita, Kansas to be shipped to the West Indies via Lykes Brothers' Lines, arriving here ahead of the ship, would be unloaded either in berths 1, 2, 3, or 4, the covered portion of which has been allocated to that ship. It is never unloaded in sections 7, 8, 9 and 10 (R. 983).

During the height of shipping season, as a general rule, berths 1 to 4 inclusive are used mainly for cotton. We do not handle general cargo when the berth is crowded with cotton. We solicit all kinds of cargo for storage. We maintain a commodity storage warehouse in addition to a cotton storage warehouse. We solicit export flour but I reserve the option to take it when I want it and refuse when I don't want it. I would not store export flour; it would be put in ship's berth. It is their property. If Lykes Brothers had been assigned to berth #1 and had it full of cotton for Trans-Atlantic ships, and the flour came down going to West Indies and we had no room in berth #1 (R. 984), the steamship office would ask me if I could handle it, I would tell him I was blocked, and he would send it to some other pier. I always notify the ship's agent when I am blocked. The wall referred to was an original construction of the warehouse; there are openings in the

[fol. 316] dead line through which they can handle merchandise.

The trolley line is a method for handling cotton and commodities from one part of warehouse to the other. I do not know whether it is a saving over trucking. Track #2 is the track that is used by the compress for the handling of their business (R. 985). Track #1 is used by my department for handling steamship cotton. The cotton is not delivered to me on trolley; the compress takes it on the trolley and blocks it shipside; then they notify me they have 100 bales; I go there and count the 100 bales and in turn transfer it to the steamship agent and he counts it. All I know is that they deliver it to me on the trolley. I do not know whether they take it up on receiving platform and compress it and send it right out or not; it is never sent out there for storage. If they had sold four or five thousand bales, they would not store it in there waiting for the ship, unless it was within 15 days of the arrival of the ship. If it was within 15 days, it would be stored there; it would be under bill of lading and in the ship's possession; the compress would not have anything to do with it. (R. 986.) They could pick it up on the receiving platform, compress it, and put it in storage; they do do that, but when it is put there, it is for ship's position. I unload outbound cars from the railroads, and use the trolley for that purpose, transporting the cotton to the car. Then we unload the trolley and load the cotton into the car. (R. 987.) In loading a car to be switched to the municipal docks, I presume that we would utilize the trolley to transport the cotton from the storage space to the car, but I am not familiar with the operations of the compress. It is possible to load a dray at the Houston Compress Long Reach plant. I presume that they would use the trolley in loading cotton out of storage to a dray but it is only hearsay. We permit 15 days free storage in cotton destined to our facilities; there is no additional 15 days waiting for a ship. The Board rules allow a shipper 15 days in advance of the arrival of the ship to concentrate his cotton on the shipping berth. (R. 988.) [fol. 317] The dock department tariff provides for 15 days free storage without stating the purpose. A shipment of cotton which might constitute more or less a cargo being held 15 days for Anderson Clayton would go into one of

those berth spaces. There is a wall with about 20 doors to each berth at the front of the berth spaces. We have put a roof over berths 1, 2, 3 and 4, and while that may be called part of the warehouse it is strictly under the supervision of the ships. I have been with the Long Reach Plant about three years. (R. 989.) The ships do not tell me what I can or cannot put in berths 1, 2, 3 and 4, but they do tell me where to put it when I want to put it in there. We cannot change that unless we store cotton in that berth for the ship, we cannot change it unless at our expense. Berths 1, 2, 3, and 4 are ship's berths and have never been used for storage; the ships do not own it, but if we once make it a ship's berth we cannot take it away from them if they have cotton in it. (R. 990.) When there are two steamers in the dock one lying abreast is not working from the warehouse proper; it is waiting its turn to get into the berth. It may have arrived earlier than was intended. Between the dead line and the waterfront is my jurisdiction. The Compress has nothing to do with it. Their men cannot come in there and touch a thing. They have got to come and see me. It is possible to use a berth for storage and at the same time use it as a berth for the steamer, but we would have to move that cotton out in order to take care of the cotton that the ship was sending to us. The allocation to the steamship gives them the exclusive right of position during the time it exists. The duration of the allocation is anywhere from one day to a week, depending on the amount of business the ship has. (R. 992.)

WITNESS C. B. FOX

I am Manager of United Gulf Steamship Company and [fol. 318] Manager of S. Sgitovitch & Co., Steamship Operators, operating to all of the United Kingdom, the Mediterranean Ports, Italy, Egypt, and the Far East. I have been in the steamship business at Houston six years, and I am familiar with the wharves and docks and places where [fol. 319] vessels take their cargo. I am familiar particularly with the situation at the so called Houston Compress Docks and also at the docks at the Weatherford & Crump

Co. (R. 993). Our vessels take cargo at berth 2 of the Houston Compress Company, which has been permanently assigned to us for quite a long while; we take approximately 95% of our cargo at that place, having an office and telephone there. In the last two years we have not taken cargo beyond the dead line indicated on Mr. Stocton's exhibit in that portion of the warehouse numbering 1 to 10. We take cargo only in that portion between the dead line and the water front, which is 90 feet wide. (R. 994.) We do not sign for outbound cargo unless it is in the ship's loading berth, between the dead line and the water front. The distance is 70 feet wide and 400 feet long. We do not make a practice of shifting our vessels from one berth to another; we have done it once since I have been there, last year sometime. The Compress Company paid us the cost of moving it. I would know if we had shifted it other times, because I gave the orders that moved the ship. (R. 995.) Our ship employees do not go inside the warehouse through the doors in the wall to take cargo.

Cross-examination:

We discontinued the practice of going beyond the dead line because the Houston Compress Co. constructed this new shipside facility which I call a ship's loading berth and officially designated it as a place to receive cotton for steamers. It is our instructions that we do not go beyond the main wall separating this new place from the old warehouse. Before that there was not anything but a runway between (R. 996) the aprons and the main warehouse. The runways, I think, were about 75 feet apart. All steamship [fol. 320] cotton was then delivered on the way side trolley system in the warehouse, which is the space about 40 feet wide, the trolley was the dead line for steamship cotton and separating the warehouse cotton.

If one of our ships was berthed at #4, we could go from there to Alexander Sprunt's for cotton if we had enough to go for. If we had enough to go back to Anderson Clayton's and had the time we would do that. When we return, we might be put in berth 1, or berth 2, or berth 3. We have berth 2 practically all the time (R. 997). It is 66 feet wide, leaving out the trolley space, and 400 feet long; its capacity is about 4,500 bales of cotton. We frequently have

vessels that load more than that. Over 50% of the cargo we get here is delivered the last two days the vessel is in berth, so we are able to keep up with it most of the time (R. 998). All booking contracts are considered to be preformed when tender is made at the ships berth and within 200 feet; but the berths are not always 200 feet wide. For instance, pier 8, at the municipal dock, is only 120 feet wide. If the Compress Company at berth #2 saw fit to put some of our cotton in compartment #3 within 200 feet of our ship, we would have a right to decline it, because it would not be in the berth, and we would not accept it. They never declare that to be the berth; although it could be done. The sole power of allocation is with the Houston Compress. They could put the cotton in #3, if it is not within 300 feet of the ship side declare that to be a part of the berth and demand that we receipt for it; they would have to declare it a part of the berty at first however. They would probably notify me verbally first, then in writing, and clean out the space; I would have the right to supervise it, have it watched, and go in there Sunday and holidays, and load it at my convenience. I would have to have notification in writing because of insurance regulations and other responsibilities. Our liability as an ocean-carrier is fixed [fol. 321] when we receive it (R. 1000). Under those conditions we cannot decline to receive it. We pay the Compress Company $50.00 per ship shed hire and ½¢ per gross registered ton per day for docking privileges. The shed-hire covers 15 days (R. 1001). We pay shed-hire as long as we have any cotton there. If we have no cotton there and no ship, the Compress Company is free to allocate the space to another ship of another line, and that is done. We have a home berth regularly at pier #8 of the city docks. We shift from that to a private dock to get cargo and from one private dock to another; the most we have ever shifted here has been three time (R. 1002). We will shift to meet conditions when cargo is scarce and competition keen. I would shift a good many times right now. The size of our home docks is 120 feet by 400 feet. It will hold about five or six thousand bales of cotton. The 200 foot rule is the result of the contract between the long-shoremen and the ship for the trucking of the cotton. So far as the con-

tract with the shipper is concerned, we require the cotton to be placed in the ship's loading berth and the 200 foot rule has nothing to do with it (R. 1003). The length of the trucking varies with conditions. If the aft end of a ship was on the North end of the dock and the aft hatch was completely loaded and I still had cotton, it is possible (R. 1004) that it would have to be trucked to the forward end of the ship, and in some cases it would be three or four hundred feet distance, and I would have to pay 5¢ a bale extra trucking on it. Also if the wharf clerks are careless and do not get the cotton spotted correctly, we have extra trucking expense. We load usually to two ports and for that reason we know beforehand where we are going to put the cotton and we spot the cotton for Manchester at one place and for Liverpool at another and Genoa and Naples the same way. Some ships load by the stern and some by the head; we have both kinds of ships; they run from 409 feet to [fol. 322] 472 feet in length. Most of them fit in the berths there (R. 1005). The receiving clerks can designate and spot the cotton according to hatches that we want to load. We determine that before the ship gets to Houston, so as to prevent extra truckage. The practice at Alexander Sprunts warehouse is about the same as the Long Reach; they have a little more space. The docks will hold more cotton. There is a dead line, a wall 170 feet back from the water front. The apron at Sprunts is about 20 feet wide and the shed inside to the first track is about 150 feet. We take cotton in any space in that warehouse which is allot-ed to us; we do not take cotton from the other warehouses behind the railroad tracks. (R. 1006). They have a run-way which connects the two warehouses, and they can truck the cotton from one warehouse to the other. The practice at the piers serving Weatherford-Crump & Co. has changed a good deal in the last eight years. Originally, when Houston was short on dock space, before Sprunts and Long Reach were built, 7 and 8 were very busy piers; I don't think they will hold over 5,500 bales of high density cotton apiece. 7 and 8 are the north side docks that serve Weatherford Crump. The city owns the entire property, having it leased, and elected to exercise its option to take back and designate as wharf space any part they want to.

There is a place there that will hold about 3,500 bales of cotton. In those days we signed for cotton in that space known as side berth shed, it was afterwards trucked on the dock pier 8, when the Steamship Company called for it, but at all times it was under his supervision. We had our watchmen on it (R. 1007). We would receipt for cotton in the Gin Point Shed. We loaded it direct from Alexander Sprunt & Sons wharf into the ship; it is a little point connected right on to Sprunt's property and cut off from the main Magnolia property by the I. & G. N. R. R. tracks. It [fol. 323] belongs to the Magnolia Compress Co., but they have it leased to Sprunt. It is not used much now to deliver cotton to the Magnolia Cotton Compress Co. warehouses (R. 1008). We have not received any cotton at the [fol. 324] Turning Basin Compress in the past two years except on the wharf proper. Prior to that time the space marked compress in the rear of Wharf 8 on Exhibit A-34 was taken over by the city and used as space within which cotton could be delivered to the ships. I understand that they had another space in the compartment marked 'compress' but I am not sure about that back of #7. At the time of the former hearing in this case, it was the practice of the steamship agents to receive cotton in the space marked "Press" back of the wharves (R. 1009). We never [fol. 325] stood the expense of taking cotton from the compartment marked "press" to the railroad. That had to be done by the Compress Company. So far as our handling cotton is concerned, the berth has always been the space on wharfs 7 and 8. No part of the berth space on the wharf proper is used by the Turning Basin Compress company or by shippers for storage. That is also true as to the portion of the Ship Channel Compress known as Sprunt's Compress and as to the part which is designated as our berth, I am reasonably sure (R. 1010). Other vessels use wharfs 7 and 8 shown on Aston's Exhibit A-34 besides ours; Pier No. 7 is allocated to the Harrison-Leyland Lines. Any steamship line can go in there when it does not interfere with us, and they do go in there and lift parcel lots. The tariffs permit 15 days' free storage in Warehouses 7 and 8.

WITNESS S. A. DUNLAP

I am Local Manager of the Texas Transport & Terminal Company, Steamship Agents (R. 1011). I represent also the French Line, Creole Line, Holland-American Line, Head & Lord Line. They do a considerable portion of the cotton business in Port Houston. I have been here three years. We serve French ports, Belgium ports, Italian ports, Holland ports.

The 200 foot limit is only an agreement between the steamship agents and the labor loading cotton, having nothing whatever to do with the contracts which the steamship agents make with the shippers for the delivery of cotton. The longshoremen are paid extra for any cotton they are required to truck more than 200 feet. The contract between the steamship agents and the shippers specifies that the cotton is to be delivered to the ship's loading berth. It makes no reference whatever to the distance from the ship (R. 1012). The shipper might tender it to us within 200 feet of shipside, but unless it were within our loading berth we [fol. 326] would decline to accept it. We do not shift our ship at Long Reach from one berth to another to accommodate the shipper; on one or two occasions we have been required to move a ship out of berth on account of holding it there longer than we anticipated and the berth having been assigned to some other ship to follow us. In cases of that kind the Compress Company always pays the moving charges. As a practical matter during the cotton shipping season, it would not be possible to shift from one berth to another to accommodate the shipper, because the other berths are always assigned to and occupied by other ships (R. 1013). We do not get all of our Weatherford Crump and Company's cotton at Weatherford, Crump & Company's wharves; it frequently reaches us at other wharves. The same is true of Alexander Sprunt & Son's cotton and Anderson, Clayton & Company's cotton. We may get cotton from any one of those shippers at our Municipal wharves' allocation; we have on many occasions. It is a practice that cotton will be shipped out through one wharf that came from one of the so-called shipside warehouses (R. 1014) that did not serve that wharf.

Cross-examination:

The Long Reach Plant does not ship very much cotton from there to the other piers. All ships load at the Houston Compress Company's dock. They do load some out in cars and switch them. Anderson-Clayton have big contracts of several thousand bales at a time with the steamship agent (R. 1015). My berth is No. 1 at Anderson, Clay-
[fol. 327] ton's plant. Our contracts specifies it must be delivered to the ships' berth. Compartment No. 1 is not a shipside berth, and couldn't be designated as my berth. If it is within 200 feet of the ship's tackle there is an objection to it. We would not accept cotton there. They have to assign us to One, Two, Three or Four, known as ship's berth. If we are assigned to No. 1, and they have a shipment of five thousand bales of cotton in storage space No. 1, we would not accept or sign for the cotton there (R. 1016). The wall is the dead line; the rest of the warehouse is set aside as a warehouse by the Houston Compress Company. If they made it a general practice throughout the year and assigned a certain specific amount of room in those storage compartments for shipside space, it might be done, but for specific cases to take care of an extra large lot of cotton, I would not do it; I would not accept it in Storage Space No. 1, although it would be within 200 feet of the ship's tack-e, we would have no control over that space. My tariff does not say I will (R. 1017). The power to designate the space rests with Anderson, Clayton, and we accept their designation as Berth No. 1, but we would refuse to accept two feet beyond berth No. 1 unless they would make empty space there and set aside certain specific space which would be under my control. If it had our cotton in it and was under our control, we would not accept it unless it was a general practice and was given to us permanently as shipside space. We would not have to have that particular space permanently but equivalent space. I load boats three or four or five a month at the Houston Compress Company's Plant; in 95 or 96 per cent of the cases, I load them at one place (R. 1018). On the other occasions I accept their designations of a berth, because I may have two ships loading there at one time. I would not accept an assignment two feet

back of the dead line. We are responsible for that cotton [fol. 328] as soon as we accept it. My employees designate what proportion of the cotton shall be placed on one part of the berth and what proportion on another part (R. 1019). The Houston Compress Company loads it out there at their expense.

[fol. 329] In all cases before accept- cotton we check over the amount that is in the berth and have it in the berth. I represent several lines and have a good many ships; I have no connection with the firm represented by Mr. Bloomfield. Mr. Bloomfield's lines also have berth No. 1 (R. 1020). I imagine that ships of other lines also load there. We make application to the Houston Compress Company for a berth, and if Mr. Bloomfield's lines are in No. 1, we cannot get in there on the same day. We do the same thing on other docks. We do not take our turn; prior to the arrival of each ship we make application to the Compress Company for a berth on specific days. They assign us that berth for specific days (R. 1021). If we are assigned a dock for Tuesday, and it is raining on that day, the man who is assigned for Wednesday will probably wait until I get through. He would not take his regular turn and thereby cause me to drop back, except in extreme cases where he had to make a specific sailing on that day. It can be done in that way however (R. 1022). I will not say that it is done; and I will not say that it has not been done, because I do not know. My engagement contract calls for the delivery of my cotton alongside or at my loading berth; the latter is optional with us. For many years by common consent and usage, the distance of 200 feet has been treated as within the ship's tackle from a labor standpoint; from the standpoint of the contract between the shipper and the steamship agent, it has not (R. 1023). I have never heard of a specific instance of a carrier refusing to accept delivery of a cargo tendered within 200 feet of the vessel at or alongside of her loading berth; but I have refused to accept cotton within 200 feet of my loading berth, because it was not in the loading berth nor alongside. "Alongside" would mean loading from a barge into the vessel (R. 1024). My contract, the Texas Transport & Terminal Company, contains the following clause: "to be delivered alongside the vessel or at her loading berth not later than—" I use

[fol. 330] the engagement note, shown in Exhibit A-35, when I contract with a shipper for the ocean carriage of cotton, and I give it a contract number, dating it and thereby confirming the engagement which is usually verbal. I state the port from which it is to sail and describe the port of destination, fixing the rate of ocean carriage at per 100 pounds; the steamer is not named in all cases; sometimes I reserve the right to substitute steamers (R. 1025). I fix the time when the cotton is to be shipped from the interior. If we are occupying Berth No. 1, it is physically possible to receive cargo in Compartment 1, or 2, back in the warehouse. It has not been done in the last two years (R. 1026). I cannot say positively, but I do not think that other people do it. If the Houston Compress Company should set aside in Warehouse No. 1 so many feet, roping it off and designating it as part of our loading berth over which we would have control and in which we could put watchmen, and tendered us cotton in there, I do not think we could accept it without violating the Liverpool Bill-of-Lading Conference, which requires that cotton must be in our possession in the ship's loading berth before we will sign a bill of lading for it. The designation of a part of the berth would not meet their requirement unless made throughout the year and made a part of the tariff (R. 1027). They have not tendered us anything of that sort in the past two years and we have never had occasion to accept or reject it. A great deal of cotton is handled by barges to vessels at Houston If we were loading at one of these berths and cotton should be brought to our ship in a barge, we would take it alongside the vessel at the loading berth. We usually make application to the Houston Compress Co. for berth space about 15 days before arrival of the ship. They usually assign the space the same day or the next day (R. 1028). The time of our assignment might not begin until later, from which time we would exercise control over that [fol. 331] space. If the assignment is made on the first day, we would have the space until the time our ship was to leave. We always designate in our applications the day that our ship is going to arrive, the day she is going to sail, and the time that we want to begin receiving cargo into the berths, which may be before the ship arrives. Very often it is ten days before the ship arrives. If a ship of another

line is loading in Berth No. 1 at the time we make application and the other ship is due to leave four days before our ship arrives, that berth would probably be assigned to us. Very often happens that we have less than fifteen days before the arrival of the ship; very often we do need it and do not ask for that much. Half the time we only ask for four or five days before the ship arrives. We get all of Berth No. 1, 375 feet by 90 feet, but there may be some other ship assigned in there for a different loading, which would be receiving cargo at the same time. There might be cargo in that berth space for several ships, two or three, I don't think there would ever be more than that. Each ship owner policies its own lading and cargo (R. 1030). Our 15 days free time begins from the day on which we ask permission to receive the cargo. We do not reserve the entire berth during that time. There is very often cargo in that berth which is not intended for our vessel, and we do not in all cases have the privilege of the full berth space (R. 1031). We do not then make application for further berth space for the full assemblage of our cargo for the same ship. We would have the privilege of asking for portions of the warehouse not assigned to the ship's berth, so long as it was within 200 feet of the ship's tackle, but we probably would not get. They assign one berth to one ship. Our cargo would not be mixed up together in the berth with the cargo of another line; it would be segregated. Some of the lines customarily have sailings in one part of the month and other lines in other parts of the month (R. 1032). So that both lines could utilize the same berth space without much difficulty. Our [fol. 332] ships usually sail on the 12th day of the month, and are out three days before Mr. Bloomfield's first boat sails. Therefore, as a general proposition, there is no conflict. There is nothing peculiar to Houston in allowing more than one line to use a berth; it is done at all ports, at New Orleans particularly. It is done at all of the Municipal piers (R. 1033). I would not have the berth unless I had complete jurisdiction over it insofar as the compress is concerned. We use a dock at Galveston on which three or four different lines operating under our agency are also placed. We bring their cotton in there, have Havre cotton, Genoa cotton, Rotterdam cotton, Antwerp cotton, all

on the same dock. They allocate to us a dock space for our shipping firm. We operate it among our lines as our needs require, always with the wharf company's privilege of taking or putting other ships in there if they want to (R. 1034). The French line sails on the 12th; it is the only passenger line. None of my lines sail very often at Houston on the 15th; Lykes Brothers' lines usually sail on the 15th; we don't. It is a fact that the only fixed twelfth of the month sailing is the French line, and that is the exception. There is a watchman for each berth's pier, who is paid by the Maritime Association. We pay our watchman individually (R. 1035). We have to charge this watchman service as against each particular ship in our office; the Houston Compress Company pro-rates the watchman's service, and there is a charge per ship for watchman service. When we make allocation at the Houston Compress warehouse, we state an estimate of the amount of cotton that we desire space for (R. 1036). We base that figure on our booking and anticipated booking, plus that we hope to pick up. After they grant us space for a certain amount, we have never had any difficulty in getting it. We also have clerks, who are our own employees, looking after our ship's berth (R. 1037).

[fol. 333] WITNESS E. P. FOWLER

I am Local Manager for Fowler & McVitie, Agents for Larringa Line, Castle Line, Nervion Line, Norway, Mexico, Gulf Line, Swedish-American-Mexico Line, Trans Atlantic Line, Saint Line, and the Kawasaki-Rossevelt Line. They serve Liverpool, Manchester, Havre, Ghent, Antwerp, Barcelona, Scandinavian and Danish ports, Bremen and Hamburg, and the far East, Kove, Yokahoma, and Shanghai. Our home berth in Houston is No. 2, Municipal dock.

We sign for cotton when it is put in the berth, and at no other time. We do not shift from one berth to another at Long Beach (R. 1038). We have only one berth at the Municipal dock, No. 2; there is only one berth there. We never call at the Turning Basin. We do not shift at Sprunt's, and at none of these three plants do we sign for cotton until it is placed in our loading berth. Weatherford-Crump Com-

pany switch their cotton to whatever dock the ship may be loading at. They send the cotton from -heir own plant to dock other than their own plant to dock other than their own to reach our ship. We also receive Sprunt cotton at other than their own dock (R. 1039). We also receive Anderson, Clayton cotton at docks other than those of the Houston Compress, quite a bit of it. They invariably switch all the Barcelona cotton.

Cross-examination:

Two boats can berth at Alexander Sprunt's dock at one time; we have never had any trouble with crowding. I have been in the steamship business in Houston three years (R. 1040). The Houston Compress Company designates our loading berth, and we receive cotton wherever they designate (R. 1041). We receive cotton at one ship's berth, not all over the plant. The size and dimension of the berth is fixed by the Houston Compress Company; it is already built (R. 1042).

[fol. 334] WITNESS W. C. HUNT

My business is International Mercantile Marine; I am agent for Harrison, Leyland & Company, Ltd., the International Mercantile Marine, and T. J. Harrison of the Harrison Line. Our vessels serve any port in the United Kingdom; we do a considerable portion of the exporting business from Houston (R. 1043). I have not been down to Long Beach for two and a half years. I get business from the firsm that do storage business at the Houston Compress Company, I get it at my home berth, which is Dock No. 7. I go to Alexander, Sprunt & Sons' dock; I do not shift my ships there. I go to Weatherford, Crump's dock (R. 1044). I do not shift my ships there. I do not sign for cotton at either of those two compresses until it is delivered to the ship's loading berth; we are continually asked to do so, but we refuse. There have been occasions, when, due to lack of business, other ships have come in and used our facilities at Berth No. 7. I utilize other berths that are at times utilized by other lines. There is nothing peculiar about that situation that is different

from any other port that I know of (R. 1045). We formerly went to the Houston Compress pier, and when we did they assigned us a berth. They assigned us a space in the warehouse to assemble our cargo, marked off by walls. We received cotton there (R. 1046). I had nothing to do with choosing the space assigned to us. We took what they gave, and were sometimes very glad to get it. I don't know what goes on there now as I don't use that wharf. We carry some cotton for Anderson, Clayton; some goes to Liverpool, and we get that at Pier 7; it being delivered to us by cars. I should not say that it is a large proportion of the Anderson-Clayton movement to Liverpool (R. 1047). I do not know where it originates; it is their own cotton. We go to Alexander, Sprunt, and their wharf superintendent designates the berth. The apron is about 15 feet wide. We sign for cotton in the facility there, but we do not call it a warehouse. We draw no distinction between the apron and the [fol. 335] warehouse (R. 1048). Our demand is that they put it within 200 feet of our ship. We then take it aboard without cost to them. They designate our berth as in their warehouse, and that is a regular practice with us. Whether we move from Alexander, Sprunt to Weatherford, Crump depends on whether we get most of our cotton there and proceed to sea, or whether we go to Weatherford, Crump's and then to sea; that is what we call shifting from one dock to another. We do not go back. We make that compress our last loading berth and then to sea (R. 1049). The number of calls we make at private docks after we make the home berth depends on how badly we need cargo and what the quantities are. If it is worth going after, we go. We go to Galveston and pick up some, but not on every trip. We do not load our vessel at Houston in accordance with what has been engaged for Galveston (R. 1050). There is no fixed rule as to whether we load all at Galveston or all at Houston. That is controlled by the cargoes. I do not go to the Houston Compress here for the Anderson, Clayton cotton, because I am not one of the chosen few. I draw a distinction between that part of the facility which is considered a part of the berth at Weatherford, Crump's facility and is covered, and that part of the facility which is not a part of the berth but is a covered warehouse. I had in mind in speaking of the warehouse that part which is just

adjacent to our pier, dock No. 7 (R. 1051). We would not receipt for the cargo if it was not in that part of the facility which was adjacent to the wharf. If it was in the warehouse on the other side of the track from the water, we have refused continuously to receipt for it. We sign for cotton that is in the shed at the compress at Berth No. 7 at Weatherford, Crump's; the ship pays the cost of getting it from that point to the ship (R. 1052.) We don't sign for it anywhere except on our pier, Dock 7. On that pier we do not include cotton that is in that place marked compress. Berth No. 7 is 105 feet wide; there is a dividing wall between 7 and 8, and we sign for cotton anywhere in 7 (R. 1053). We [fol. 336] do not sign for it in the place marked "compress," nor in shed A; but I think that is practiced by some of the lines. It was never our practice. Our rates are published, and we are all in the Conference (R. 1054).

WITNESS T. E. JUDKINS

I am Local Manager for Wilkins & Diehl, Steamship Agents. We represent the North German Lloyd, The Ocean Line, and the Scandinavian American Line, and chartered steamers under the Texas Continental line. I have been in Houston in this business about three and a half years, and am familiar with the operation — the boats of those lines. Shifting from one berth to another at the same facility at Houston is not done. Our line does not shift from one berth to the other at the Turning Basin Compress Company (R. 1055). The same is true as to the other facilities. Our lines do shift from one facility to another facility for cotton; we usually make two shifts in the busy season, going to three berths. Our home berth is No. 12, the Municipal Pier; we receive cotton at that pier. We have received cotton at that pier which comes from the Houston Compress Company plant, also cotton which comes from the Weatherford, Crump plant. The same is true as to Alexander, Sprunt (R. 1056). As to shifting, Houston is not different from New Orleans. I know from hearsay that the lines at Galveston have less shifting than they do at Houston. Our line requires cotton to be placed at a given point in the berth when that berth has been assigned to us; the shipper pays for spot-

ting the cotton in that berth, I suppose. In the case of the Houston Compress Company, their operators would have to spot the cotton in that berth (R. 1057). We received cotton at Sprunt's which may come from the other plant. We have received cotton at the Houston Compress Company wharves which comes from the other places; that is not a general practice. Cotton that we receipt for at the [fol. 337] Turning Basin Press is in the ship's loading berth, either 7 or 8, whichever berth we might have. We make the same requirement as to the other facilities we serve (R. 1058).

Cross-examination:

The man that unloads the cars when they make deliveries to us has to pay the cost of making those deliveries. We have the right to designate the place or places within our berths that we want the cotton put. We try to do that with a view of keeping the steamer's lot together. (R. 1059.) The Houston Compress Company designates our berth there. We only receive traffic that is tendered at the place that is designated. When we have loaded our cotton, we go to some other place if we have reason to, but we do often set right there. If another ship wants the berth, we must move if we are not working. We have gone back a [fol. 338] second time to the Houston Compress; 99% of the time we would go back to the same berth. (R. 1060). That depends on the Houston Compress Company; but except for the last ship we sailed a few days ago we have never been outside of our particular berth; we would not object to any particular berth they might assign to us. Sometimes cotton might develop after we had left their berth, and they would switch it to us, if it was not convenient for us to come back. They would not ask us to come back again the second time. We have done so, and I would be very glad to be accommodating again (R. 1061). Anderson Clayton loading at Sprunt, and Sprunt sometimes loading over at Weatherford Crump, is usually due to the fact that they would not have a sufficient amount to justify the ships calling there. (R. 1062). The privately owned facilities or the publicly owned facilities can change the berths assigned to us from time to time as they see fit. That is true also at aGlveston. It is not a practice to

take certain cotton at the Long Reach Plant and then go to some other plant, and then come back; it is very much of an exception. Sometimes it occurs in August when the cotton is all late getting in, and all ships are trying to make a 15th sailing. The cotton coming up from the valley is always late, and all of it can not be accumulated; it has to go to their presses, and they might not have time in the last 24 hours to switch it over to where the boat is, and in order to get the boat away on time, and at the same time take care of the cargo, we might shift in there. For instance, last August we shifted into Galveston for 300 bales of cotton. (R. 1063). It is sometimes done for the convenience of the ship. It is more frequently done for the convenience of the ship, but is exceptional in any event. Other lines use the same berths that we use at Long Reach, and that is also true at the municipal docks. It is also true at other ports, and is a general practice. You could [fol. 339] not utilize your facilities unless you did that to the fullest extent. We have shifted at Houston recently for less than 500 bales. (R. 1064).

At the Houston Compress Company, two years ago, before they constructed additional facility, the practice was to assign the Steamship Companies berths in Sections 1, 2, 3, 4, 5 to 10, but designated as berths 1 to 4, and the Steamship Companies had the space from the trolley line to the wharf. The space, shown on Exhibit A-33 as 1, 2, 3, and 4, [fol. 340] was formerly a runway and it was opened on either side, and a waterway. They later housed that over and floored it off. The changed condition is that they have housed that over, and moved that space nearer shipside. (R. 1065). That is the only change I know of, except that this wall is on the back side of the ship's berth now. The wall was there before; it was the front of the warehouse before, and now they have made the front a little further out in front, and have used their former front as the back. The changed condition is that the space they formerly assigned to us has been moved nearer the ship, and divided by a wall. There has been no change in our practice and custom of picking up cotton, except that it has been improved, and has been made a little more economical for us. There has been no change in our obligation to pick up that cotton. (R. 1066). Prior to this changed condition,

we went back to what is the trolley line, shown as a dotted line, and picked up cotton. That was set aside as our space in those days. (R. 1067). The trolley is there and it goes right down to the floor, and the cotton goes back and forth all the time; you cannot pass it. The track is overhead, and the cotton is hooked on by a bale hook. You know where it is all right that the car would stop (R. 1068). The major portion of compartments 1 and 2 behind berth #1, are within 200 feet of the ship's berth. If Anderson & Clayton & Company, the Houston Compress Company, designates part of compartment 1 and 2 as part of our berth, which they do not do, I would not be bound to take the cotton there; I am not bound to take it anywhere only where I want it. My contract is for delivery in my loading berths, at or alongside. That is not my loading berth. My loading berth at Long Reach, in 99% of the cases, is #4. If they were to designate part of compartment 8 or 9 as part of our loading berth, it being within 200 feet of our vessel, I would not take the cotton there unless it was permanently set aside as a loading berth. By permanently, I [fol. 341] mean as a general practice. I use berth #4 more or less continuously; I cannot go there without his permission. He can tell me to come to berth #2 if it suits him better. We apply to them for loading space, and they designate berth #4 (R. 1070). If they should say in that designation that berth #4 and compartment 8 and 9 is assigned to me, and that my cargo is stored there, I would not accept it at the moment. I would probably consult my Lawyer. We have an office at berth #4 and a telephone. That is our headquarters as far as that facility is concerned. Before the intervening space between the warehouse and waterfront was built in, it was not possible to deliver any substantial quantity of cotton on the wharf proper (R. 1071). We had to have a covered space. The same wall is still there, and the intervening space between that building and the apron, or open wharf, has been built up and a covered wharf built there. The so-called warehouse on that wharf is the wharf of the warehouse and is the ships' loading berth now. Formerly there was not room at our berth to store our cotton (R. 1072), and we receipted for cotton in this space back to the trolley line, which was a berth then. It was made a berth by the Hous-

ton Compress Company with the consent of the Steamship Agent. I reserve the right to say that it is my berth. I was guided in my approval of it by the principal point that it must be space over which I could exercise control; the fact that it must be within 200 ft. so that we would not have to pay extra trucking would enter into consideration (R. 1073). If we told them we would go back 200 ft. and they set aside the 200 ft. they would not have any warehouse left.

If another steamship line is going to use the berth, they all have their own employees there to receive the cotton, and I know furthermore that Anderson Clayton & Company put into effect some two years ago, just to avoid using that shipside space for storage, a rule instructing all Steamship Lines not to sign bills of lading unless the release was on there signed by the Houston Compress Company, so they don't ask us to sign for a bill of (R. 1074) lading unless it is absolutely receipted for by the Houston Compress Company showing that it has been released. Ander- [fol. 342] son Clayton sent out a circular letter to all the Steamship Lines to that effect so far as their cotton was concerned. They did it as a protection for the Steamship Agents. If we had 1,000 bales of cotton in berth #4, and arrived there and found that the berth was full, I would know from general practice that it is Steamship's cotton. Our clerks are down there to look out after our cotton, and the other fellow would have his clerks there for the same reason (R. 1075). I know the Steamship space and I know that it absolutely set aside for steamship cotton. I believe anyway that the cotton there is steamship cotton. The Steamship Agents of the other lines have charge of that other part of the cotton at the same time. We know that other Steamship Companies are coming into berth at #4, because it is round house talk (R. 1076).

Under our contract with the Southern Pacific, it costs us the same to load a bale of *b*otton, whether it is trucked 200 feet or 40 feet to the ship (R. 1077). I understand that the vessels do not shift at Galveston. I was at Galveston before I came here. The Liverpool Conference requires that a Steamship Agent receipt for cotton, once it is within their loading berth and within their possession. If it were not for that conference agreement, we could receipt for it

farther back as has been done formerly. The conference rule was made in 1907, I understand. It has been in effect ever since. I would say that Anderson Clayton & Company notified us to discontinue the practice with respect to receipting for this cotton about two years ago. I don't remember now. I know it is a system they put in and it is for the protection of the Steamship Agents. I really don't know why it was done, but prior to that time, (R. 1078-A) we had not receipted for any cotton in the warehouse. There might have been some regulation of their own that they wanted to put in. Prior to that time, our loading berth was defined back to the trolley line, and that was within the warehouse, within the building that is now the warehouse. I think I made inquiries at that time as to why they asked us to do that. If I recall, it had something to do with insurance (R. 1078*B) I don't know anything about the insurance. All I know is that they put it wherever the berths might be before we would sign for it. It did [fol. 343] protect us in our berth (R. 1079). The Houston Compress Company could not release the cotton then; in other words, it forced the cotton into that particular berth and could not be delivered anywhere else and this receipt obtained.

WITNESS F. R. DALZELL

I am Traffic Manager of the Houston Cotton Exchange. Prior to the Fall of 1919, Houston was not a port. We did have a very large concentrating business here, but all of the cotton was shipped out of here to Galveston for loading on ships. At that time, there was peace between Houston and Galveston. In the Fall of 1919, a few ocean steamers started coming to Houston but our aspirations to become a port were not taken very seriously. In June, 1922, Weatherford Crump (R. 1080) filed a complaint with the Interstate Commerce Commission, I. C. C. #13,991, based on the fact that they were paying 83½¢ to shipside at Galveston, while their competitors were shipping export cotton fully prepared for exportation to shipside high density compresses at 80¢ at Galveston and paying no more to get it to ship. The chief aim of this complaint was to obtain reparation

on shipments already made. The record in that case shows that the one rate plan was suggested then by the complainant in Docket 13991 and was opposed by Mr. West representing the Dallas Cotton Exchange, Mr. Toombs of the Southern Products Company, Mr. Griffin of the MacFadden Agency and Mr. Thornton and myself. At the hearing, Counsel for Weatherford Crump & Company inadvisedly suggested the establishment of a one rate plan as being the rate equalizer that would make everybody happy. (R. 1081.) The following figures show the progress of the port of Houston in the export of cotton. The first season, 1919, 1920, the total exports amounted to 69,889 bales. The next season, 1920-21, 466,185 bales; the season 1921-1922, 478,141; season 1922-23, 718,942; the season 1923-24 1,065,612; the season 1924-25, 1,821,828 bales and so far this season, up to the present time, we have probably 1,500,000 bales and will exceed 2,000,000 bales before the season is over. When our export business here first opened up, the growth immediately was so great and the success of the business was such as to convince everyone that the exportation of cotton on vessels from Houston was not only possible, but was almost certain of permanency. Therefore, certain plans were developed for extending the cotton business in [fol. 344] Houston. Exhibit #6, introduced into Docket 13,991 by Mr. Booth, showed that for the season August 1st, 1921 to July 31st, 1922, cotton moved to shipside in Galveston on through bills of lading to the extent of 32% of the total movement. It showed also that cotton moved to shipside on local bills of lading to the extent of 23.6%. That means local bills of lading for shipside. That means there were 55.6% of Galveston's business that was shipped into Galveston from interior concentrating points, paying the export rate. Houston's export on the contrary, had been almost exclusively Houston concentration, or boiled down and stated clearly, the interior concentrator exports his cotton via Galveston, and only such cotton as is concentrated in Houston is exported from Houston. On March 15th, 1923, the Galveston Commercial (R. 1083) Ass'n., telegraphed and wrote to the Interstate Commerce Commission about the menace that had arisen in Houston. At the time the two rate plan stood approved and accepted in principle and the only deviation from it that was called for by the

complaint of Galveston was that the waterfront presses be especially penalized by being charged the waterfront rate, whereas the back of the waterfront presses were to be continued at the 80¢ rate (R. 1084). The decision which caused us to ask this rehearing prescribed a one rate plan for all cotton and for all warehouses, specifically refusing to make provisions for refund by carriers in all cases of the cost of handling from warehouse to ship, which was the condition under which Galveston agreed to (R. 1085) accept the one-rate plan. In the meantime the Houston concentration continued to grow and Houston's exports grew correspondingly and now Mr. Thornton applauds the one rate plan without the condition he showed necessary to balance the interior and waterfront concentrators. The decision which was intended to create equality between waterfront and back from the water front and the interior is found to be so damaging to the back of the water concentrators at the port that we were compelled to ask reconsideration of (R. 1086) the facts as they existed at the ports and also for a reconsideration of the relative situation of port concentrators vs. interior concentrators.

[fol. 345] In connection with whatever reference we may find it necessary to make to the situation of our interior competitors, we wish to make the statement that we go into these matters purely in self-defense. We have no wish or desire to take away from anyone anything that they may have, where it does not place us at an undue disadvantage. We do not care to play the part of reformer or regulator of the affairs of others. This investigation was started by complaint of Galveston backed up by the Dallas Cotton Exchange. It is not true that we are trying to destroy the cotton business of the entire state and force it all to be conducted at Houston. We endeavor first to show that conditions as they really exist in Houston give no just cause for complaint to Houston's competitors, and if the first order is vacated we do not ask for any change to be made elsewhere. Next we will endeavor to show that the one-rate plan with charges for second concentration which the first (R. 1087) decision approved would be disastrous to back from the waterfront concentrators and would place those under greater disadvantages as to the waterfront concentrators and under new disadvantages as to the interior

(R. 1088). Finally if we are not relieved from the disadvantages of the one rate plan, we will ask for equality by establishment of a charge for first concentration.

(Exhibit #A-36, dealing with the number of bales compressed in transit for the years 1923, 1924, and 1925, not concentrated and the number of bales concentrated for the same year, and the names of the compresses, was received in evidence.)

This investigation is the outgrowth of agitation on the part of the Galveston Commercial Association and Cotton Exchange which started with the telegram to the Interstate Commerce Commission on March 16, 1923, which stated that "several large cotton compresses are now constructed at shipside Port Houston, Texas, for the express purpose of defeating the application of the export rate."

In March, 1923, when the Galveston Commercial Association and the Galveston Cotton Exchange telegraphed to the Interstate Commerce Commission, there was in ex- [fol. 346] istence in Houston a compress and a warehouse so situated as to be within Galveston's definition of what constitutes a waterfront compress. This was called the Turning Basin Compress, and it had been in operation for two or three years and was in operation in October, 1922, at the time Docket 13991 was heard in which measures Messrs. Thornton, Toombs and West stoutly defended the properiety of and the necessity for the two rate plan. At that time only one plant was under construction, and during the time that Special Agent McCord and the Galveston Interstate made their investigation and during the first hearing of the case, its operations were of a makeshift character, due to the fact that it was only half finished. Vessels do not shift from one berth to another at Long Beach, and they never did. During the first season of the operation of this plant, the wharf, the space between the warehouse and the ship's berth, had not been finished, which [fol. 347] made it necessary (R. 1098) that a space within the warehouse proper be designated and set aside as space for delivering cotton to ships, but this expedient was made necessary by the uncompleted condition of the plant. At the conclusion of the shipping season of 1923, 1924 the work of filling in for the floor of this wharf and the construction

of the roof was finished, and by the beginning of the next season, August 1, 1924, the wharf being completed, delivery of cotton to ships thereafter were made only on the wharf and nowhere else. It is equally true that neither at the Turning Basin Compress nor at the Ship Channle Compress, both of which are called waterfront compresses, is there any cotton signed for by ship's agents in the warehouses under any such conditions as described on page 161 of the decision of the Interstate Commerce Commission, nor is there any cotton moved from warehouse to ship by employees of the vessel. Of all of the cotton handled in the Long Reach Plant this season, there was only seventy and twenty two hundredths per cent loaded on ships at Long Reach Wharves, and twenty nine and seventy eight hundreths per cent moved out of this plant in box cars and was loaded on shipboard at other wharves (R. 1099). That twenty nine and seventy eight hundredths per cent may have been out via their warehouse or out via rail out of Houston (R. 1100.) All of that cotton undoubtedly moved under transit arrangements. I am referring to the thirty per cent that moved out of the Long Reach Plant in box cars and went to mills, perhaps, in New England and reached the vessel at Galveston. If it went to some other wharf than the Long Reach Plant in Houston, it would probably move out on a switch rate, the expense from Long Reach to shipside equalling the difference between the 80¢ rate and the 83½¢ rate, and there would be no claim for refund of concentration, but it would, in fact, be a concentra-[fol. 348]tion shipment (R. 1102). It would all be set in box cars as distinguished from drays. That estimate includes all cotton, counting round bales at two for one. Some of this 30% that moves out of Long *B*each goes to the docks or wharves or other places in Houston. The Ship's Agent yesterday testified that every one of them got cotton that had been in the Long *B*each plant at warehouses other than Long Reach. I do not know how much of this 30% is that sort of movement (R. 1108.) The shipper would have had the privilege of declaring it for export and paying the 83½¢ rate from origin to shipside. We might do that. I do not think that that is done. The reason for the existence of the two rate plan is demonstrated there. The cost to this shipper in sending his cotton to Long Reach from another

wharf bridges the difference between the 80¢ and the 83½¢ and saves him the necessity for making claim for refund of that small amount, and saves the railroads the necessity of handling that claim, and expedites matters generally (R. 1104). Cotton moving to the other three facilities termed waterfront facilities for concentration and merchandizing goes out not only over the adjacent wharves but by rail to points in Texas and elsewhere. At the Ship Channel Compress, of the total amount of cotton handled in the plant, 72.52% was put on ships at the adjacent wharf, and 24.48% was moved out of the plant by box cars, drays or barges for landing on ships at other wharves; it may have gone to the Pacific Coast, or southeastern spinning points via rail. At the Turning Basin Compress, of the total business handled in that plant, there was 45% put on ship board at the adjacent wharf, and 57% moved out by box cars, drays, or barge, to be loaded on ships at other wharves, or to destinations reached by rail.

One other change of importance has taken place since Special Agent McCord made his investigation. He testified at page 70 of the record, that there was no relationship whatever between the Shipside Density Compresses at Galveston (R. 1105) and the Cotton Concentration Company. Within the last year or so, Mr. Steel has disposed of his interests, and it is my understanding now that these presses are owned by the same interests that own and control the [fol. 349] Cotton Concentration Company in Galvestion.

To show the fallacy of the impression that waterfront property is beyond the reach of anyone except the most prosperous and that those favored ones would have an unfair advantage over everyone else, the Clinton Compress and the Magnolia Compress are both located immediately on deep water, but the owners of these properties, have not been able to see enough advantages in loading ships at their own wharves to justify the expense of building a wharf. They were both in existence long before any of the present waterfront presses were constructed (R. 1106). They are among the leaders in the amount of business done in Houston.

The decision of the Interstate Commerce Commission states on page 167 that there are no strictly waterfront facilities at New Orleans. We do not conceded that the public

wharves at New Orleans are not in every (R. 1107) sense a water front facility to the same extent as we have water front facilities at Houston, but since the date of the original hearing, a new plant has been established at New Orleans, called the Alabo Compress Company, Inc., in which cotton is handled from warehouse to shipside by trolley, and in which conditions and operations as existing at the Houston water front are duplicated. At New Orleans there is now apparently the same competition between compresses as at Galveston, which really was the source of this complaining and investigating.

Exhibit A-37 is a letter distributed by Watters, Hay & Company, Inc., in which they announce that the Export Compress and Warehouse Company at New Orleans is prepared to give the shippers a saving of 25¢ per bale by the process of receiving cotton at the export compress and warehouse at New Orleans on the domestic rate, which is 5¢ per 100 lbs. less than the export rate, compressing the cotton to high density at a cost (R. 1108) of 75¢ per bale, out of which the Compress Company agrees to deliver the cotton to shipside in their own trucks. The fact of the matter is that the cotton does not get to shipside on the domestic rate; the intermediate compress has got its press to attract [fol. 350] business. The compress, in following the usual rule and charging 75¢ for the simple act of compression, and then charging 25¢ to dray the cotton to the shipside, has cut the compress charges to the extent of making 75¢ his total charge for both compression and delivery to the ship (R. 1109). The arrangement with the railroad, whereby the railroads will allow this cotton to be unloaded, and go into a compress while it is still apparently in custody of the railroad relates entirely to some arrangement that they have made dealing with surrender of bill of lading (R. 1110). The arrangement whereby the Alabo Compress absorbs delivery from that facility to shipside out of the cost of high densitying cotton is the same arrangement that has been in effect all along, and was in effect at the time of the previous hearing by the presses located back from the water front (R. 1110). I see no difference in the situation here from what existed in the previous hearing at Galveston, Houston and New Orleans. It has not changed except that the decision of the Interstate Commerce Com-

mission says that there was no water front plant in New Orleans, and I say that the Alabo Plant is a water front facility. I think the record shows clearly that this absorption of delivery costs to shipside out of the high density charge is the same in connection with the Alabo Compress as it has been all along with the other up-town compresses (R. 1111). Some of the uptown presses at Houston absorb the delivery cost to shipside out of the high density compression cost. Conditions, at New Orleans, we maintain, are the same as at Houston and at Galveston, that is, there are water front plants in the same sense, but cotton is moved from warehouse to shipside without the use of railroad cars or drays, but with this in view, we do not think there is any justification for the one rate plan being established at New Orleans.

My Exhibit A-38 consists of excerpts from J. H. Glenn's Port Cotton Tariff #15-A, I. C. C. A-525 and shows the existence of the two rate plan at all ports east of and including New Orleans (R. 1112). The rate in all instances on export is higher than on domestic delivery (R. 1113). [fol. 351] The Oklahoma rate is 3½¢ less for domestic delivery than for shipside delivery. The Commission prescribed the two rate plan; from Oklahoma to New Orleans in Docket 11965 it has not been made effective from Oklahoma and is not effective from Oklahoma today. On the cotton from the line of the T. & P. Railway and northward, the export rate from New Orleans is lower than the domestic rate because of the fact that New Orleans on (R. 1114) that traffic is equalized with Galveston on export and is not equalized with Galveston on the domestic rate. From Texas to New Orleans there is the 96¢ rate, there is the same spread between the domestic rate from Oklahoma as from Texas; I think the Oklahoma spread, instead of being 3½¢ is only 3¢, but the trend is there (R. 1115). From Oklahoma to New Orleans that condition exists because of failure of the carriers to conform to the order of the Interstate Commerce Commission in 11,995. At the present time the difference from Texas to New Orleans is not there, although it stands ordered into effect by the Commission. All the differences I have been talking about are the differences between local delivery rates and shipside rates. The two rate plan is in operation at all ports in the United

States where there is concentration of cotton and also exportation of cotton. The order in this case makes no reference to Port Aransas or Corpus Christi, Texas. Port Aransas has done some cotton business in the past and is anxious to handle more cotton in the future. I do not know what the local situation is there with respect to water front compresses, or back from the water front compresses. At Corpus Christi a very ambitious program of ports (R. 1116) development has reached a point where the date of September 1st, 1926, has been set for the opening of traffic. From that date, we will be in direct competition with Corpus Christi, at which point there is located the Port Compress and Warehouse Company, and we must protest against the entire adjustment as to Houston being overturned without due consideration being given to conditions at the competing ports of Port Aransas and Corpus Christi.

[fol. 352] If the carriers' revenues as a whole are to be preserved, the one rate plan must result in an increase in the present railroad rate to water front compresses, although there will be no increase in the service (R. 1117) performed by the railroads, and there is no allegation by the railroads or by anyone else in this case, that the present rate is not sufficiently remunerative. The present rate to waterfront is 80¢ and for shipside delivery 83½¢. The Commission has said that there should be a one rate plan, but that this should be done without increasing the railroads' revenue, or reducing them, consequently we must make an average somewhere between 80¢ and 83½¢ for all. All of the traffic is not moving at the 80¢ rate. If the one rate plan goes into effect, it undoubtedly will result in an increased rate to the shipside compresses. It is debatable whether it will result in a similar increase to the compresses up-town, because they now pay 80¢ in and (R. 1118), the equivalent of 3 1/3¢ to get to the ship. The Commission says they must be charged 83½¢ and the cost of their delivery refunded so in dollars and cents they will be precisely where they are now; that is, they will be the same as they are except for certain fatal defects which I am going to try to point out. One certain result of the inauguration of the one rate plan would be to increase the profit of the unfavorably located compresses, which as matters

now stand are obliged to cut their prices in order to compete with the more favorably located presses (R. 1119).

My Exhibit A-39 is an excerpt from the Galveston Wharf Company's local tariff #18, I. C. C. #28. It gives to compresses located on the Galveston Wharf Company the privilege of stopping cotton moving under through export bills of lading for the purpose of high density. It confines this privilege to the shipside high density compresses which operate under lease of the Galveston Wharf Company. That Company also serves with its own rails the Moody Compress, Kempner Compress, Southern Products Company Compress, and the Cosho Company's Compress, but those compresses, not being located immediately on the wharf front, may not operate under the items displayed in my Exhibit. Under Item 39, the shipper would pay the railroad freight rate of 83½¢. I am asking that the new [fol. 353] rate would be 83½¢; if that is any other figure, the situation will remain just the same, and the compress, we will assume, would make the standard (R. 1120) charge for high density compression of 75¢ and then under the terms of this tariff item, either the shipper or the compress company must bear the cost of moving the cotton from the compress to the ship, which it may be assumed will be comparatively low because of proximity. There would be no charge made by the carrier for the privilege of compression in transit, regardless of how many times it may have been stopped previously (R. 1121). In contrast under the one rate plan the cotton would move to the Kempner Compress at 83½¢. The compress would make the same charge for high density compressing as the High Density Compress, 75¢ per bale, and if the cotton had not been previously concentrated, the railroads would move it from compress to shipside free of charge, so that in this instance the back from the water front compress with its less favorable location would be able to put the cotton on ship board for less cost than the Shipside Density Compress with its more favorable location. On the other hand, if this cotton compressed in Kempner's compress back of the water front, had been previously concentrated, the carriers would, as matters now stand, charge 18¢ per bale for the second stop, and Mr. Kempner's plant would clearly have cause for complaint about the discrimination of the Shipside Density

Compress being allowed to stop cotton for the second time without penalty for the stop (R. 1123). To create equality, it would be necessary for the carriers to move the cotton free of charge from the Shipside High Density Presses to ships, and, on the other hand, it would be necessary for the carriers to grant the second stop for concentration at the back from the water front presses without charge (R. 1124).

(Testimony as to the second concentration charge was objected to and admitted subject to exception, the Examiner ruling that the second concentration feature is not reopened by the order of the Commission).

[fol. 354] The interests that I represent here are largely back from the waterfront interests (Record 1135). My chief object here is to save the back from the waterfront interests from the assistance that was offered them in this decision and which analyzed is found to be very injurious to the back from the waterfront man. Another condition exists which was not developed during the previous hear-
[fol. 355] ing, and that is that a result which would follow the inauguration of the one rate plan would be an increase in the cost to the concentrator of putting cotton to shipside, which would to that extent reduce the price which the producer receives for his cotton. As matters stand, any shipper who cares to concentrate at either Houston or Galveston may take advantage of this competition between compresses and achieve the appearance of getting to shipside for 80¢, and while this effect is obtained only by reason of the fact that the compresses are willing to shrink their revenue by paying the cost of delivering to shipside out of their fees for compression, it does not actually reduce the shipper's cost of getting to the ship, and this saving goes back through the process of competition between cotton buyers and the producer, so that finally, this effort to equalize fortune, opportunities or abilities, if successful, will cost the producer of this cotton an amount equal to the difference between the present net earnings of the compress, that is. 72½¢ less 18¢. or 54½¢, and the earnings that they would like to get of 75¢ per bale. The order in this case aims to establish one rate for all deliveries (R. 1136). As we analyze the situation, there would be neither a one rate plan, or equalization. Certainly from the railroad's

viewpoint there would be anything but one rate; there would be as many different rates as there are different situations among port concentrators. 1. Those concentrating at Houston back from the waterfront, where a box car is used, would pay the freight rate of 83½¢, and the railroad would retain the whole sum and perform switching free (R. 1137). 2. Where cotton is concentrated at Houston back from the water front, at one of the half dozen or more compresses that are located on shallow water, or at one of the two that are located on deep water, but have no wharves, so that for practical purposes they are just the same as back from the water front compresses, and from which barges are used, the shipper would pay the railroad rate of 83½¢. The railroad would then perform no further service, but would pay our 17¢ per bale, or 3½¢ per 100 lbs., leaving a net revenue of 80¢. The 3½¢ per 100 lbs. would be paid to the barge company and the railroads will probably pay 17¢ per bale to the shipper. 3. Where cotton is concentrated at Houston back from the waterfront [fol. 356] presses and the dray is used, the shipper would pay railroad freight rate of 83½¢; the railroad would then perform no further service, but would pay out 18¢ per bale, leaving a net revenue slightly less than when the barge was used (R. 1138). The shipper would pay the drayage and then turn in his bills to the railroad and the railroad would pay the shipper leaving net to the railroads of 80¢. 4. Where cotton is concentrated at Houston on the water front when loaded on ship at the adjacent wharf, the shipper would pay the railroad freight rate of 83½¢. The railroad would perform no further service, but would pay something for delivery and unloading, for handling from the compress to the ship. The railroad would refund the cost of delivery from the inside of the plant to the ship. The railroad has lost possession of the cotton when it collects the 83½¢ rate and turns it in to the concentrating warehouse (R. 1139). The same is true where the cotton is hauled out to the barge. The railroad would have performed the same service as in No. 1 but would have less net money. The railroads have already agreed that in the event the one rate plan becomes effective, they will pay the waterfront compress an amount equivalent to the cost of delivery from compress to ship (R. 1140). The agree-

ment was not written out (R. 1142). 5. Where cotton is concentrated at Houston and loaded on ship, at other wharves, and moving in railroad cars, the shipper would pay the 83½¢ rate; the railroad would keep all the money and perform the additional switching service free, leaving them the same amount of money, but more service than where the cotton is concentrated back from the water front and switched to the wharf. 6. The cotton is concentrated at Houston on the water front and loaded on ship at other wharves by barge, the shipper would pay the 83½¢ rate, but the railroad would perform no further service, but would refund 17¢ per bale. 7. Where cotton is concentrated at Galveston, whether at the water front or back from the water front, wherever wharf drayage is absorbed by the railroad amounting to 18¢, 19¢ or 20¢, the railroad service will be greater than on cotton to Houston, and the net revenue to the carrier would be less than on cotton delivered at Houston.

The same conditions would exist everywhere, regardless [fol. 357] of what the rate may be all over Texas, Oklahoma and any other place, the 83½¢ rate being used only to illustrate the situation and to show that we will not have a one rate plan but will have a many rate plan (R. 1145). All of the computations are based upon the shipper collecting his concentration refund. That, however, is impossible because much of the cotton handled in Houston and Galveston has been previously concentrated, and the stop in Houston or Galveston is a second stop, for which the railroads charge 3½¢ per 100 lbs., in item 60, Texas Lines Tariff #29-C, I. C. C. 190. This means that the one rate plan, instead of equalizing, will make for unequalization.

A Waco buyer, buying cotton that is concentrated in the Greenville warehouse, would pay nothing for the privilege of concentrating at Greenville. The exporter located in Houston buying the same cotton (R. 1146), brings it to Houston and he is having a second concentration in Houston, and after that he would have to pay 3½¢ per 100 lbs. The Waco man would have to pay the same if he wanted to concentrate at Waco the second time. If the Houston exporter did not concentrate at Houston, he would not be in any different position than the Waco concentrator who did not concentrate at Waco. Concentration contemplates the

merchandising of the cotton, whether at the interior or at the port, and when a port exporter buys cotton, which has been concentrated in the interior, if he re-concentrates it at Houston, or at Galveston, he does so for his own convenience in remerchandising it to suit his particular circumstances. He has established himself at (R. 1147) Houston, and he wishes to do his business there. He is forced to buy it at places where it has been concentrated in the interior, because, without his wishes and with no benefit to him, it has found its way into the first concentrating point. The Houston exporter is not benefited in any way or in any degree by the fact that it was previously concentrated in the interior. It is impossible for the Houston exporter to buy the cotton before it has been concentrated, because he starts out to buy cotton and he finds that, [fol. 358] instead of being at the place where it was grown and ginned it is somewhere else, having been brought into a concentrating point. He has no means of knowing that it has been concentrated.

[fol. 359] He can ascertain whether it is wagon cotton or cotton that is moved in by rail, but that would not be answer to the question, because the first concentrator has the privilege of substituting one bale for another, and he may choose to sell him the wagon cotton and then apply railroad billing to it. The matching of billing is some time after it is sold to the exporter at the port; the interior concentrator may not call for his concentration until the end of the shipping season (R. 1149). The interior merchant, or the farmers, may store their cotton at the compress warehouses in the interior and have it concentrated under the tariff's provision. If a farmer wanted to hold his cotton for better prices and still wanted to have it in a warehouse where he could get negotiable warehouse receipts, he would have to put it in one of these interior concentration points, although he did not merchandise it (R. 1150).

The barge line in Houston harbor delivers cotton from all compresses which are located on the water, Long Reach, Shippers, Exporters, Merchants, Clinton, Magnolia, Turning Basin, and Ship Channel, to shipside in Houston harbor. The barges come alongside the vessel on the water side and the loading is done by shiptackle from barge to

ship. Due to the fact that this cotton does not actually pass over the dock, the wharfage rate is only 1c per one hundred pounds, whereas the wharfage rate on cotton at Houston which actually passes over the dock is 2c per one hundred pounds. Under the order in this case which requires the establishment of the one-rate plan, the shipside rate is to be made by adding wharfage to the railroad freight rate. This would necessitate two shipside rates, one made by the addition of the 2c wharfage and the other made by the addition of the 1c wharfage charge (R. 1151).

To the extent that cotton reaches Houston and Galveston which has been previously concentrated in the interior, and which would be charged by the railroad 3½c per hundred pounds for the second stop, this one-rate plan would fail to equalize, but the burden in every instance would fall upon the back of the waterfront concentrator, placing [fol. 360] him to that extent under a disadvantage as compared with the interior concentrator who gets his first concentration from the railroad free of charge, and at a disadvantage with the waterfront concentrator because the waterfront concentrator would not have to pay for a second concentration (R. 1152).

My exhibit A-39 shows an arrangement at Galveston by which the shipside density presses are permitted to stop cotton for high density, without any charge being made by the carriers for the privilege of stopping. It seems to us that this forms a precedent for the elimination of all charges for second stops at Houston and Galveston. A further precedent is found in item 40 of Texas Lines Tariff 17-D, Fonda's I. C. C. 135, where it is provided that Railroad Companies will concentrate cotton linters once at any available point in Texas in line of shipment, without charge, and a second time without additional charge at Houston, Beaumont or Aransas Pass, or at the port point of destination, and before delivery at the wharf (R. 1153). In connection with the transit stop at Houston or Galveston under the one-rate plan, the railroad would not in the case of cotton handled from compress to ship by dray or barge, perform any additional or different service than they do now, and they would be collecting a higher freight rate than they get now. For instance the railroads will bring cotton into Mr. Kempner's warehouse at Galveston for

80¢. Mr. Kempner used his own drays to haul the cotton from compress to shipside. Under the one-rate plan, the railroad would collect 83½¢ and then refund to Mr. Kempner 3½¢ to pay him for hi*m* expense of drayage. There being no difference in the service and no difference in the railroad remuneration, it is difficult to see how there is any justification for an additional charge of 3½¢ per one hundred pounds for the second concentration under the one rate [fol. 361] plan (R. 1154).

Since the expense to the carrier of granting first concentration is not less than the expense in granting second concentration, and since there is no charge for concentrating in the interior, there could not be any very great impropriety in permitting the second stop also without charge.

All cotton in Texas at the present time is entitled to one stop for compression in transit and to another stop for concentration. The owner may transit press the cotton at one compress, and then send it on to the next compress for concentration, so that certainly the carriers hold themselves out to stop cotton twice without charge for either stop, and this suggests that it would be quite proper to give us a second stop free where the cotton had not previously stopped but once. The shipper cannot select the stop for compression, except that he may indicate that he wants it to be compressed in transit; the carriers may stop it wherever they please (R. 1155). The order would also increase the rate on cotton mill cotton. Since Mr. McCord made his investigation, there has been established in Houston two cotton mills, the Houston Textile Mills, manufacturers of cotton blankets, and the Houston Cotton and Twine Mills, Inc., manufacturers of cotton twine. Records of the Cotton Exchange show that there was consumed in Houston, during the year ending July 31st, 1925, a total of 5,236 bales of cotton. By the end of the year ending July 31st, 1926, the figures indicate that there will have been a consumption of something over 10,000 bales, and by the end of the calendar year 1926, the operations of these two mills have expanded to a point where they will consume not less than 20,000 bales per year. A large mill is also being constructed in Galveston (R. 1156). The one rate plan would increase the rate on cotton consumed in the spinning industry in Houston and in Galveston, al-

though certainly there has been no allegation and can be no allegation of discrimination or prejudices as between the waterfront concentrators and the spinning industry.

At the present time our cotton comes into Houston and [fol. 362] Galveston under the intrastate tariffs which carry virtually no routing restrictions, and which permit cotton to come in on whatever route happens to be the most natural one. Under the one-rate plan, cotton would continue to come into Houston under the same intrastate tariff, but upon arrival here would have to be placed under concentration claim for the purpose of recovering the cost of moving from compress to shipside, which would have the effect of making this cotton subject to the interstate tariff. In every instance, then, where cotton had moved via some route into Houston or Galveston, which is not permitted or provided for in the inter-state tariff, the port concentrator would lose his refund. Item 395, Supplement 12, Texas Lines Tariff 50-F, I. C. C. 166 (R. 1157) provides that rates from points on the Abilene and Southern to Houston and Galveston apply only via Abilene or Anson, Texas, Wichita Valley Railway, Wichita Falls, Texas, Ft. Worth & Denver City via Fort Worth, Texas. The natural route in this case is southward through Ballinger on the Santa Fe, or via Abilene and the T&P. The route via Wichita Falls required in the Interstate Tariff is most unnatural and impractical.

Item 397 in the same Supplement provides that the rates from Wichita Falls and Southern will apply only via Wichita Falls, F. W. & D. C., Ft. Worth, H. & T. C., the natural route here is southward through Breckenridge, and the Wichita Falls route being restricted to the H. & T. C. alone, south of Ft. Worth, would certainly deprive our concentrators of any refund on cotton from off that line. (R. 1158.) The same situation exists from Wichita Valley points and the Amarillo division of the Rock Island.

Item 40 of Texas Lines Tariff 29-C, Fonda's I. C. C. 190, provides that concentrated cotton must be re-shipped from concentrating points via the same line that brought it in. The back from the waterfront concentrators at Houston are obliged to use railroad service in getting from compress to ship. It is impossible for them to know at the

time they are shipping cotton what billing they will have available for their concentration claim, and the unavoidable consequence of this condition, is that when the ship-
[fol. 363] ping season is over and the shipper undertakes to file his concentration claim, he is bound to find that on much of his business he will be unable to match up inbound billing with outbound bills of lading, and here again the back from the water concentrator from Houston will be under serious disadvantage and injury as compared with the water front concentrator at Houston and Galveston who uses drays exclusively and does not use railroad cars. How the refund on the switching charge could be arranged when the cotton came in on railroad into Houston, I am unable to work out (R. 1159). Another condition exists which was not developed during the previous hearings, and that is the injury to Houston and Galveston which it would work in the disruption of the relationship which in I. C. C. 11,965 was established as between Texas Ports and New Orleans on cotton from Arkansas, Oklahoma, and Louisiana. The one rate plan as proposed for Houston would certainly raise the rate for domestic delivery (R. 1160), in addition to which it would certainly penalize the port concentrator at Houston and Galveston to the extent of the charge for second concentration on about 40% of the total business, and to this extent the findings in I. C. C. 11,965 would be swept aside as a result of a local dissatisfaction at Galveston, which does not even pretend to go into the question of volume of the rates (R. 1161).

My Exhibit A-40 is intended to show the reason for not setting aside relationships established by I. C. C. 11,965. My Exhibit A-41 is a copy of the reports to the Commission written by the Chairman of a Conference between shippers and carriers held in New Orleans on September 25, 1925, by suggestion of the Interstate Commerce Commission, after receipt of Mr. Thornton's protest (R. 1162).

Another difficulty in the way of the back from the water front concentrator which would result from the one rate plan, and which was not developed during the previous hearing is the loss of their refund which would result from the passing of compresses. Compresses are often passed
[fol. 364] because they are so close to the final destination that it would be foolish to stop the cotton there for com-

pressing (R. 1163). Cotton which now moves to the port under the intrastate rate, which does not provide any penalty for passing the compress, under the one rate plan, [fol. 365] will, when concentration claims are filed, have to move under the interstate rate, which provides penalties for passing compresses, and that will result in the loss of the refund in so many instances as to damage the back from the water front man very seriously (R. 1164). This applies only to cotton moving from Texas, my showing here has reference to short haul cotton, where it would be a manifest injustice to the cotton owner to force him to compress at those compresses. My particular showing might have reference ot Panhandle Cotton, but that would be purely incidental. I refer to particularly those cases where the distance is not sufficient for the carrier to absorb the cost of compression and still have its 62¢ and still the shipper will be penalized if he does not patronize that compress (R. 1165). Exhibit A-42 shows that for distances up to and including 75 miles, the rate does not include any part of the cost of compressing. At 76 miles the rate includes 1¢ for compression, and from that point onward the amount of the cost of compression that is absorbed continues to increase until at 161 miles, the entire cost is absorbed. On a shipment moving for 100 miles on which the rate is 64½¢, if the shipper should ask the carrier to compress, the carrier would absorb only 8½¢ and the shipper would pay the difference. The carriers would demand a minimum of 56¢ before they will absorb any charges and they will absorb up to the full compression charge where the rate is above 56¢. The rule is stated in virtually that language in Item (R. 1168) 30 on page 15 of this tariff. Exhibit A-42 reflects the condition that exists under the intrastate rate only. It could not make any difference whether the shipper paid the difference between what the carrier absorbed and the cost of compression, or whether it were added into his rates and the carrier absorbed it (R. 1168).

Exhibit A-43 contains the inter-state tariff provision which has the effect of completely depriving the shipper of the right to pass a compress regardless of its location, and regardless of the circumstances of its business by inflicting a penalty of 12¢ per 100 lbs. upon any cotton which has

passed a compress without stopping for compression. The shipper on the intra-state traffic in Texas now has not the [fol. 366] right to designate the press at which his cotton shall be compressed (R. 1169). However, if he buys cotton 75 miles from here, which would place him 5 miles above the Brenham Press, he does have the privilege of saying that he wants the cotton to come from the shipping point right to destination in Houston without an intermediate stop; that is what I mean by passing compresses. I do not mean that the shipper has the right to designate compression at any particular compress in transit. His right to have it shipped to Houston without intermediate stops would apply to 400 miles from Houston under the intra-state tariff. I am seeking to show that under the one rate plan it will hereafter cost the concentrator more money to get his cotton to Houston than it has ever cost him before, unless he submits to compressing it at Brenham. Whether or not the cotton is compressed to high density after reaching Houston makes no difference. If he submits to compressing at Brenham, he will have to pay for compressing which is really of no value, and if he does not submit to compressing at Brenham, he will be penalized 12¢ per 100 lbs.

My Exhibit #A-44, page 1, shows the nearest compress on each of the lines out of Houston and the distance from Houston to that nearest compress. The cotton shown on page 2, produced in the counties between Houston and the first compress, would not have to be back-hauled under the Commission's decision (R. 1171). In some cases it would be hauled into Houston flat, and in other cases the railroad might back haul it for their own convenience; if they did the latter, they could not charge the shipper for the compression. I think about 25 or 30 bales were brought into Houston this past season in trucks (R. 1172).

When cotton reaches Houston it is within two or three hours of Galveston; but under the tariff rules shown in my Exhibit A-44, the shipper would be obliged to waste his time and money by permitting the cotton to be compressed at Houston, and the carriers would be compelled to permit its compression. It is estimated that standard compressing at best takes three days time, and page 1 of Exhibit A-44 shows that on many of these hauls the carriers will be paying out 18¢ per 100 lbs. for compressing, although the [fol. 367] remainder of the haul is only 50 miles.

My Exhibit A-45 shows a comparison of rates from stations on the I. & G. N., beginning with the first point north of Houston. The destination in every case is Galveston. I have shown the distance in each case and the rates to Galveston under the intra-state schedule of rates, and also under the inter-state rate (R. 1173). This shows clearly the unreasonableness of the compressing rule which one rate plan would force upon us. From Aldine, the first station north of Houston, which is 61 miles to Galveston, at the present time a shipper in Galveston can send his cotton into Galveston for 38¢ per 100 lbs. It would be folly to stop that cotton at Houston for compression. Nevertheless under the inter-state rate, which is the tariff that we are about to be forced into, his rate for that same movement if he refused to compress it in transit at Houston would be 68½¢ per 100 lbs. The intra-state rate of 38¢ does not include shipside delivery; it includes delivery in the warehouses at any plant in Galveston (R. 1174). The 56½¢ rate which is shown in the third column of rates in Exhibit A-45 is explained as being the present inter-state rate to the shipside at Galveston, taken from Fonda's Tariff # 50. The rate is 68½¢ in the last column of the first line, is arrived at by adding the penalty of 12¢ per 100 lbs. which is provided for in that same tariff, and which is reproduced in my Exhibit A-43. The first column of rates is the through uncompressed rate under the intra-state tariff. The second is the compressing in transit rate at railroad expense. The inter-state rate adds a penalty of 12¢ per 100 lbs. to the movement moving through uncompressed (R. 1175). The second column of rates is flat delivery or depot delivery. The third column shows the rate for shipside delivery. The 12¢ is added to the shipside delivery. There is no flat delivery rate in (R. 1176), the inter-state tariff. The only rate in the inter-state tariff is the shipside rate. It includes forced compression in transit and carries the 12¢ penalty. [fol. 368] The Texas Commission has never authorized such a penalty (R. 1177). The local delivery rate is an intra-state rate and the shipside is an inter-state rate. The local delivery rate on flat cotton is 80¢ and there is no penalty added. The rate on shipside is 83½¢ and there is a penalty added. The 80¢ rate does have an inter-state application, but not in the sense that it may be used to shipside, but only

to peculiar localities or to some railroad whose line begins in Texas, runs out of the State, and then comes back into the State.

My Exhibit A-46 shows the effect on cotton coming into Houston. For extremely short hauls there cannot possibly be any profit to carriers in stopping for compression in transit nor benefit to the owner of the cotton (R. 1180). On cotton coming out of Brenham the distance is so short and the rate to Houston is so low that the railroad would absorb only 61½¢ per 100 lbs. cost of compressing if the cotton was stopped there, but under the tariff the penalty of (R. 1180) 12¢ would nevertheless be assessed if the shipper should run his cotton through without stopping at Brenham. These conditions exist with regard to every railroad line running out of Houston to greater or lesser extent (R. 1181).

On my Exhibit A-47, I have taken the I. & G. N., which has two lines out of Houston, one extending to Palestine in east Texas, and the other terminating in Ft. Worth in Central Texas. I have shown first the stations on the Palestine line, with distances to Houston and the rates to Houston both inter-state and intra-state. In contrast I have shown stations on the Ft. Worth line for which the distances are identically the same as the distances from stations on the Palestine line. The nearest compress on the Palestine line is at Palestine, 151 miles from Houston. The nearest compress on the Ft. Worth line is at Navasota, 71 miles from Houston, with another at Bryan, 101 miles from Houston. All down the line on both branches of this railroad, the intra-state through uncompressed rate from equal distant points are identically the same. The intra-state compressed in transit rate all the way down the line are virtually the same on both lines for equal distant points. That is also [fol. 369] true of inter-state rates on compressed in transit cotton, (R. 1182), but when we come to the inter-state rate on through uncompressed cotton we find startling differences. On the Palestine line at 79 miles, we find the station of Riverside, Texas. The through uncompressed interstate rate is 77½¢, but when we get over on the Ft. Worth line for a haul of 79 miles we find the station of Dinkins and there the through uncompressed rate is 89½¢ per 100 pounds. The existence of a compress on the Ft. Worth line

at Navasota causes the rate on through uncompressed cot-
[fol. 370] ton from all points north of Navasota to be increased 12¢ per 100 lbs. over what it would be from equidistant points on the Palestine line, because there is no nearby compress on the Palestine line. If the shipment from Dinkins was stopped at Navasota and compressed in transit, the net revenue to the carrier, after paying the compression charge, would be 59½¢ as contrasted with 89½¢ from the same points if it were not compressed (R. 1183). It is not our position that the 12¢ additional charge for flat cotton is involved in this case; that is just one condition that was not developed at the previous hearing, and I offer this to show the impracticability of the one-rate plan (R. 1184). We suggest that the situation be left as it is (R. 1185). The 12¢ penalty must be removed, or you will not have one-rate plan (R. 1186). Our only reason for going into the advantages of the interior concentrator is for the purpose of showing that the port concentrator, particularly the back from the water front concentrator is already so situated in his competition with the interior man that he cannot bear any further burden. Among the advantages that the interior concentrator now has is his choice of ports, the benefit accruing from the ability to use through export bills of lading, thereby getting relief from demurrage or other expense in getting his cotton aboard ship and also getting very extensive indirect service performed for him free of charge by the carriers, the extent of which is shown in detail in my Exhibit A-13. I refer to a backhaul service in order to concentrate or compress cotton, which is a service rendered to accommodate the shipper (R. 1187). The shipper has the option of directing that the cotton be back-hauled to a compress point for concentration; but not for compression. It runs up to 250 miles in some instances. The back-haul privilege for concentration has to some small extent perhaps grown out of the competition between carriers, but mainly it is competition between concentrating plants and shippers, commercial conditions. If all the producers from a certain territory want to ship to a certain concentrating point where the market is good, they may prevail on the railroad to back-haul their
[fol. 371] cotton free of charge to bring it there (R. 1188). The Exhibit does not show the amount of cotton that is

back hauled; it shows the amount of backhaul in miles that could be availed of by the shipper if he elected to use it (R. 1189). We do not propose to eliminate that back haul service; we show it as one of the advantages which the interior concentrator has, as another reason for leaving us alone instead of loading us up with further handicaps (R. 1190). I do not adopt Mr. Fulbright's statement that if they are not going to leave us alone, then the interior concentrator should pay for the service that he gets, including his back haul.

Another advantage that the interior concentrator has is that he pays nothing to the railroads for the service and expense incurred in stopping cotton for transit concentration even in a direct line of transit. The practice of giving transit privileges (R. 1191) on cotton without remuneration, stands alone as the one instance of this character of service being given wholly free of charge. I do not think that carriers' competition and the competition of markets has entered into the element of a free transit on cotton (R. 1192). Initially all cotton was concentrated in the interior, and it was taken as a matter of course that cotton would take the concentration privilege, and the rate was so adjusted as to take care of it without any arbitrary addition to the rates. In recent years, port concentration has grown up, and the port concentrator does not use the interior stop at all. The interior concentrator continues to use it, since the increase in concentration at the ports during the last 15 years. It cannot be denied that there was additional expense to the carriers in connection with the concentration of cotton; on the inbound movement there is the expense of switching, notice of arrival to the consignee at the concentration point; (R. 1193) preparation of freight bills, covering the inbound movement, checking the shipment out of the car; collection of charges; checking up on demurrage; in fact, complete terminal and delivery service. [fol. 372] There would also be all of the accounting services done in the Auditor's office and the Treasurer's office. When the cotton is ready to be shipped out, there is the placement of cars, switching, issuing bill of lading, preparation of affidavit and certificates if for export, checking and inspecting of cotton, delay to cars, in short, another complete receiving service, and then a concentration plan which

must be checked up investigated, movement made etc. The carriers perform twice as much terminal services as if the cotton moved straight through and two services that are in fact a line haul service (R. 1194). There is a substantial amount of accounting to be done in investigating, checking, and attending to the concentration claims. The outbound movement may be made at any time within one year. Ninety-nine percent of the concentrating is done on the line that originates the cotton, so I do not know that the readjusting of divisions between the carriers would cut much figure. There are a number of short lines in Texas that do not reach the port, where the concentrating must occur after it leaves the rails of those lines (R. 1195). As to whether or not there would be much re-aligning of divisions in all cases at the port, I will say that that depends on the destination (R. 1196). "Respondent Exhibit A-48," showing the cost of compressing cotton to standard density by the compresses located in the interior of Texas, Oklahoma, Arkansas and Louisiana, was admitted in evidence. "Respondent's Exhibit A-49," showing tariff charges of representative compresses in Texas, Arkansas, Oklahoma and Louisiana was admitted in evidence. Exhibit A-50, showing the cotton received at the interior compresses for the account of stockholders at Texas' points, was received in evidence. Exhibit A-51, showing the same information for Oklahoma, was received. Exhibit A-52, showing the same information with reference to the stockholders of compresses in Arkansas was received (R. 1202). Exhibit A-53, showing the same information with respect to compresses in Louisiana was received. Exhibit #A-54, showing the cotton shipped from compresses in Texas for the account of stockholders was received. Exhibit A-55, giving the same information for Oklahoma was received. Exhibit A-56, giving same information for compresses in Arkansas was received (R. 1204). Exhibit A-57 [fol. 373] giving the same information for compresses in Louisiana, was received. Mr. A. L. Reed: These Exhibits do not represent 100% of the compresses, but they do represent all of the large compresses. Some of the smaller compresses were closed and we could not get the information (R. 1205). Each one shows the total stock and the stock owned by the shippers stockholders. As we under-

stand the ruling of the examiner, these exhibits are tendered to the petitioner for re-hearing in compliance with the Commission's order or request made upon the carriers. The witness who will explain them will be put on in Dallas.

WITNESS F. R. DALZELL

Cotton has the privilege of being reconsigned while in cars; (R. 1206) the charge for that being 15¢ per bale with a minimum of $2.25 and a maximum of $6.30 per shipment. In item 98, Texas Lines Tariff 32-E, Fonda's I. C. C. 169. Cotton stopped in transit for the purpose of fumigation under governmental regulations is charged 25¢ per bale for the privilege of stopping, as shown in item 27-D, Supplement 8, Texas Lines Tariff 17-D, Fonda's I. C. C. 135. There is a charge for the concentration of Texas Mill Cotton. In item 470-D, Supplement I, Texas Lines Tariff 17-D, Fonda's I. C. C. 135 for cotton mills in Texas, a special line of rates is given which reanges from 10 to 13¢ per 100 lbs. under the standard cotton rate, but the cotton mill rate does not carry with it the privilege of concentration, the carriers' position having been that the expense of concentration is too great to be borne out of those low rates. Therefore, in a case of cotton mill cotton, the charge for the privilege of concentration which the carriers make is from 10¢ to 13¢ per 100 lbs. (R. 1207). The St. Louis San Francisco Railroad in Freight Tariff #166-T, I. C. C. #8536, on cotton when originating at points in Arkansas and Missouri, makes a charge of 5¢ per 100 lbs. for concentration privilege on cotton. The St. Louis Southwestern, in tariff I. C. C. 4167, I. C. C. 4168, I. C. C. 4224, makes a charge of 5¢ for the privilege of stopping for concentration applying in the State of Arkansas Those are charges for the first [fol. 374] stop (R. 1208). Other transit privileges in the southwest, that I have been able to locate are on Sulphur stopped for grinding, sacking and refining, charged $3.80 per car; Houston and Brazos Valley Railway re-consigning circular 1-E, I. C. C. #20. On lumber for concentration, drying, grading, sorting, storage, planing, or resawing at St. Louis, or East St. Louis, transit charge 2½¢ per

100 lbs. S. W. Lines Tariff 106-C, LeLand's I. C. C. 1742. That is on carload traffic A similar arrangement on lumber at Cairo and Thebes, the same charge of 2½¢; S. W. Lines Tariff 121-A, Leland's I. C. C. 1681. A similar arrangement on lumber at Kansas City and St. Joseph, Leavenworth, Atchison, Kansas; similar charge for the transit privilege; S. W. Lines Tariff 117, LeLand's I. C. C. 1622. Iron and steele articles stocked for fabrication, charge for the privilege 2¢ per 100 lbs. plus charge for (R. 1209) indirect service if any; Texas Lines Tariff 31-Q, Fonda's I. C. C. 203. Lumber, wood paving blocks, poles, cross ties, etc., stock for creosoting, planing or re-sawing at points in Louisiana and Texas, charge $6.30 per car for the privilege of stopping when in direct line of transit plus charge for indirect service if any; Gulf Coast Lines Freight Tariff 592-E, I. C. C. A-859.

In regard to grain, my information in the past has been that wheat coming in for milling paid a rate outward on the flour which was 5¢ higher than the wheat rate. That was in the nature of a stop charge of 5¢ for the privilege. I understand that has been changed by recent action, so that for the future the flour rate is the same as the grain rate. The charge was made specifically for stop. You had two rates, one on grain, one on flour. Corn or oats stop in transit, except for milling, charge for transit stop (R. 1210) $2.00 per car, on a track stop for re-consignment; Gulf Coast Lines local and joint tariff #708-I, I. C. C. A-677. Where I make a one-line reference only, the same privilege is universally in effect, and the transit charge is no doubt the same. Butter stops for storage, storage charge 3¢ per 100 lbs., minimum $6.30 per car plus charge for out of route service of 3¢ per ton per mile. I&GN joint freight tariff 1405. This tariff is not filed with the Interstate Commerce [fol. 375] Commission, being applicable on Texas intrastate traffic. Butter, eggs, poultry, for storing, dressed poultry, butter and eggs charged 3¢ per 100 lbs., minimum $6.30 per car. The privilege of stopping in transit to finish loading live poultry, charge $6.30 for each stop in line of transit, plus charge for out of line indirect service. That is Gulf Coast Line Freight Tariff 845-E, I. C. C. A-868. Edible nuts, storage transit charge, 7¢ per 100 lbs., Gulf Coast Lines Freight Tariff 1425, I. C. C. A-871. Potatoes,

celery and (R. 1211) onions stop for storage transit charge, 3½¢ per 100 lbs. Gulf Coast Lines Freight Tariff 1323-D, I. C. C. A-872. Potatoes, stopped for drying, and curing, charged $6.30 per car for transit stop plus additional charge for indirect service. Gulf Coast Lines transit privilege Tariff #1324, I. C. C. A-622. Grapes, storage in transit on this privilege, there is no charge for the stop; Gulf Coast Lines Tariff #1327, I. C. C. 9624. Dry beans and peas, stopped for inspection, weighing, grading, cleaning, sorting, drying, stacking and storing, charge 3½¢ per 100 lbs. plus charge for out of line service; Gulf Coast Lines Freight Tariff 1329-C, I. C. C. #3. Citrus fruit, stop for storage charge 2½¢ per 100 lbs. plus $6.30 per car for the stop. Gulf Coast Lines Transit Privilege Tariff 1387. This tariff is not filed with the Interstate Commerce Commission being applicable only on Texas Intra-state traffic. Peanuts, stop for cleaning and shelling, charge $6.30 per car, plus charge for indirect service if any performed; Gulf Coast Lines Transit Privilege Tariff 1126-B, I. C. C. A-635. The *C*eciduous and Citrus fruits and vegetables stop for concentration or storage, where both inward and outward movement is in carload, the transit charge is $12.00 per car, plus indirect service where performed; Gulf Coast Lines Local and Joint Tariff 1121-G, I. C. C. 143. Rice, stop for milling, inspection, weighing, cleaning, sacking, mixing, grading, charged 2½¢ per 100 lbs.; Gulf Coast Lines Local and Joint Freight Tariff, (R. 1212) 1145-D, I. C. C. A-629. Sulphur, stopped in transit for grinding at Houston, charge 1¢ per 100 lbs; I&GN Freight Transit Tariff 1431, I. C. C. 142. Pecans, carloads, and less than carload shipments, concentrated for the purpose of cleaning, grading, polishing, storing, for concentration privilege, the charge is 25% of the rate from point of origin [fol. 376] to the concentration point, in addition to through rate from point of origin to destination with a further charge of 9 mills per ton mile for backhaul; I&GN Freight Tariff 2330-H, I. C. C. 958. The pecans in carloads stop in transit for purpose of concentration, shelling, grading, transit charge $6.30 per car, necessary switching to or from plant to be in addition to the through rate. This transit arrangement applies on Ft. Worth & Denver, I&GN, T&P,

Weatherford, Mineral Wells and Northwestern only. Leland's I. C. C. 1674, Item 96.

Cotton seed Cake, Meal and Oil, stopping of oil for refining, reconditioning, inspecting, barrelling, etc., no charge for the transit stop. On Cake and Meal stopped for packing, sacking, grinding, inspecting, milling, etc., transit stop, $6.30 per car, plus charge for indirect service if any; Gulf Coast Lines Transit Privilege Tariff 621-K, I. C. C. A-745. There are special circumstances that prevented the application of a charge for stopping cotton seed oil for refining. The rates were made on combination of locals on Mississippi River crossing, and if there (R. 1213) had been a charge made for stopping in transit for refining at interior points, it would have simply stopped the refining at interior points and all the refining would have necessarily been done at the rate breaking point.

Sugar, storage, no charge for this stopping privilege; St. Louis San Francisco Freight Tariff, 1686-U, I. C. C. 8513. Gluecose, corn syrup, maple syrup, molasses, etc., transit privilege for mixing with sugar etc., when originating at Sugarland, or Texas City, Texas, no charge made specifically for the transit stop; I. & G. N. Joint Freight Tariff 2697-G, I. C. C. 965. Mohair and Wool stop for the privilege of inspection, weighing, sorting, grading, storing, changing consignment, ownership or destination, transit charge 3½¢ per 100 lbs. plus charge for indirect service if any performed. Transit charge on the Wool and Mohair 3½¢ per 100 lbs. plus charge for indirect service, Item 93, S. W. Lines Classification and Exceptions and Rules Circular 1-M, Leland's I. C. C. 1674. Live stock, stopped for [fol. 377] dipping in transit under requirements of State or Federal authorities, charge $6.30 per car for the stop charge, and indirect service. Leland's I. C. C. 1674. Structural Iron stops for fabricating, charge for the transit stop being 2¢ per 100 lbs; Item 408, Leland's I. C. C. 1674.

There are stop privileges for the purpose of partially (R. 1214) unloading, and a charge of $6.30 per car for stops in Southwestern Lines Classification Exceptions 1-M, Leland's I. C. C. 1674 on the following commodities: Agricultural Implements, Bananas, Cocoanuts, beer substitutes, tin cracker cans, junk and scrap iron, mineral waters, mineral water packages, Paper and Paper Bags, Butter and

Eggs, live and dressed Poultry, Stone Wear, Turpentine, Vegetables, and Melons. Agricultural Implements stop for storage and/or distribution, charge for transit privilege 1½¢ per 100 lbs., minimum $6.30 per car; Item 465, Leland's I. C. C. 1674. Potatoes and Onions for storage, 3¢ per 100 lbs. Item 552, Leland's I. C. C. 1674. Cattle to be stopped in transit for feeding, $12.00 per car. Leland's I. C. C. 1667 (R. 1215). These items are repeated because the first were Gulf Coast Lines Tariff, and these are Leland's. The first were for intra-state application, and Leland's are for inter-state application. I am not in a position to say what the application of the particular charge is, or the particular territory that it covers. The purpose of this evidence is to show that transit services are authorized and charges are made on many other commodities into this territory under inquiry. It is our position that there should be a charge on cotton for concentration, compression, grading, marketing, weighing, sampling etc. (R. 1216) if no other sort of relief can be given to us, and if we must have the one-rate plan. That charge would be assessed against the ports' facilities to the extent that we would not collect the refund coming to us under the refunding plan, but I don't believe that we would ever pay it in the shape of its specific charge for previous concentration. I feel that the charge would put the port concentrator on a better competitive basis with the interior concentrator (R. 1217). Under the Commission's one rate [fol. 378] plan, there are so many things that operate against the port concentrator, that he would never be able to get his refund for the cost of getting cotton from the compress to the ship. The charge for second concentration, the passing of compresses, the impossibility of getting cotton from the compresses to the ship in round lots, the fact that a one hundred bale car would contain lots of cotton from all the railroads in Houston, all of those things would make it impossible for us to get the refund back, and, therefore, we will be at a disadvantage to adjust the cost of getting cotton from back of the water front to the ship (R. 1218).

We would object to having the cotton switched by the carriers from back of the water front to shipside. There would be no difference whether it was switched or drayed,

except where it could be drayed as in Galveston, the difficulty of the mixed car from the compress to the ship coming from different railroads, and the impossibility of getting our money back in a case of that sort, would not be present. I am speaking for the large majority of the business in Houston, which is situated back from the water front, and must use a box car, and will be penalized much more by this order than anybody else situated in the interior back from the water front or at Galveston (R. 1219). The concentrator back from the water front at Houston, would be in a different position from the concentrator back from the water front in Galveston, because the man at Galveston would use a dray. The particular item of inability to get back refund because of inability to load a car with one railroad cotton would operate only against the back from the water front man at Houston. If a charge were made for concentration in the interior, we would simply abandon our refund (R. 1220). We would be compensated for that loss by the fact that the interior man will have to pay for his privilege. The one rate plan will not give the back from the water front man his refund. It will mean in effect that we will have to pay 83½¢ to get the cotton into the back from the water front compresses and that we will then have to bear our own cost of getting the cotton from those presses to the ship. It is not a one rate plan and it is impracticable. We cannot recover the cost of draying or switching the cotton from the back from the water front [fol. 379] compresses in Houston to shipside, first of all because a very important portion of it has previously been concentrated. I think perhaps that one way of stating it is that we want a concentration at Houston, regardless of whether or not it has been concentrated at some other point. We do not want to pay for the concentration at Houston because the interior (R. 1221) man concentrates it. The interior man does not use second concentration, and we in Houston do not use first concentration. We have no use for the first concentration. That includes the back from the water front concentrators at Houston and Galveston (R. 1222). I mean by that, cotton that will be put on ships at Houston, having moved by rail. Where the cotton moves out by rail, that is a concentration proposition, and we would have to pay for the second stop there if we took

it, but where it moves out by boat, we abandon our refund and pay our own costs (R. 1223). It is absolutely necessary for our existence, that there *w*hould be either two free concentrations, or none (R. 1224). When I stated that the port concentrator has no use for first concentration, I meant that he has no use for interior concentration. The port concentrator does not want one more concentration than the interior; he wants his concentration at the port at no greater cost than his competitor in the interior gets his concentration (R. 1225). On our cotton coming into Houston from the interior, shipped in by cotton firms, they have no way of telling when the shipment is made in, until they file claims and take it back to the railroad company, whether the cotton has been previously concentrated or not (R. 1226).

[fol. 380] You can tell that it originated at the point where you bought it; the purchaser buys the cotton at Temple, and it is shipped to him from Temple and he pays the freight rate from Temple. Three months afterwards, the man who sold him the cotton may file a concentration claim with the Railroad agent and get a refund from the railroad on that cotton as having moved into Temple from some place. The man in Houston never knows anything about that (R. 1227).

Another of the advantages that the interior concentrator has over the port concentrator is the cheap concentration service that he is able to get from the Compresses.

There are three questions to be considered in determining whether this allowance is right or wrong: (1) did it reach its present plane by proper and justifiable gradations, (2) does it fairly represent the cost to the compresses of performing this service for the carriers? (3) does it fairly represent the benefit to the carriers?

Mr. Reed: I just want to interpose the objection that the reasonableness of the rate is not involved in this case and that testimony is not pertinent unless it is.

Examiner Money: The objection will be noted.

The allowance which the Railroads at present are making to the compresses is 18¢ per 100 pounds, which, on a 525 pound bale of cotton, amounts to 94½¢ (R. 1243). My Exhibit A-58 reproduces the item, taken from Fonda's Texas

Lines Tariff 17-A, I. C. C. 64, that fixes the amount of compress absorption that is in effect of September 10th, 1914. It applies on intrastate traffic on all lines. The interstate rules run right along with these charges as portrayed in this exhibit. I could not gather together the tariffs of twelve years back, so I am offering only the progress of this matter as in Fonda's Tariff 17-A as being representative of the course of the compress allowance. It is generally representative of the course of the Compress allow-
[fol. 381] ance in the Southwest, I should say (R. 1244). I think the same variations would occur in Oklahoma, Arkansas and Louisiana. On September 10th, that is the first item, it shows that the Railroad assumed the cost of compressing cotton not to exceed 10¢ per 100 pounds. This means that the Railroad paid only 10¢ for the compressing
[fol. 382] and did not bear the cost of unloading from the cars or reloading into the cars, that being a part of the compress operation. My recollection as a former Railroad Traffic man is that it did not. Either the shipper paid for it or the compress paid it out (R. 1245) of that allowance. The second paragraph, effective June 25th., 1918, shows that on that date the freight rate on cotton was increased 15¢ per 100 pounds, but the compress allowance remained at 10¢. That was a flat 16¢ increase in the cotton rate under General Order No. 28. Effective December 19th, 1918, it is provided that the allowance is increased to 15¢ with a further provision, which had not appeared before, that the allowance of 15¢ is to cover the service of compression, including loading of the (R. 1246) compressed cotton in the cars with a minimum of 75 bales per car. I do not know whether the rate would be higher if there were only fifty bales in the car. The 75 bale limitation was in effect an operating requirement by the Railroad. The next change is effective December 31st, 1919, continuing as before with the one exception that it dropped the words "75 bales per car" (R. 1247). The next change took place on August 26th, 1920. The Compress allowance became 20¢ per 100 pounds and a note is added which states that the above allowance of 20¢ will cover the cost of compression, including the loading and topping of compressed cotton and insurance on transit cotton. That is the intrastate rule I am

reading. There was a delay in publishing the interstate rule, and during the interim between August 26th, 1920, and until the interstate tariff was made effective increasing the allowance to 15¢, there was a time when the carrier only absorbed 15¢ and the shipper took 5¢ (R. 1249). Exhibit A-58 refers to intrastate traffic all the way through. The next change took place March 18th, 1921, and there the only change is the addition of the words "or other services of any and every description which may be rendered to or for [fol. 383] account of the carrier by the Compress Company." The next change is on July 11th, 1921; here the language is identically the same except there is added "unloading" as one of the services covered by the 20¢. The next change became effective July 15th, 1922, and makes no change in the language but does reduce the allowance to 18¢. The next change was October 1st, 1922, and consists simply in dropping the word "unloading" (R. 1250). I take it that the present 18¢ compress allowance includes the performance of the work of unloading by the compress. I have no means of knowing what the exact practice is. It is my understanding that the changes in the tariff allowance corresponds exactly in the changes in charges made by the Compress, the only exception being in the case referred to on August 26th, 1920 in regard to the interstate traffic. The effect of that exception has been nullified by the fact that the Commission granted reparation (R. 1251). I should make exception of the first change, which brought the compress allowance from 10¢ to 15¢. The through rate at that time was increased 15¢ per 100 pounds, but the compress allowance did not increase at the same time. Subsequent to that, the freight rate went up on a certain date, the compress charge went up on a certain date, and the compress allowance went up correspondingly on the same date. The advance to 15¢ per 100 pounds in compress allowance was made uniformly all over the cotton producing district, and was fixed at 15¢ by the price-fixing Committee of the War Industries Board. In the Southeast, it remained at 15¢ and does to this day. In the Southwest it has since been made to fluctuate with the changes in the freight rate (R. 1252). I make no distinction between the compress charge and the compress allowance. I refer to the amounts that the Railroads allow for the compression of cotton. The re-

sult is that the compress allowance has increased from 10¢ to 18¢, an increase of 80%, and this increase is materially greater than the percentage of increase that has taken place in the Railroad freight rates on cotton during that period [fol. 384] of time (R. 1253). The rate increased at the time of General Order No. 28. Page 4 of my exhibit A-59 shows the rate on cotton from Texas common points to Texas ports, the shipside rate, eliminating wharfage (R. 1254), but not eliminating compression, showing in the first column the gross rate on cotton as being 54¢. By gross rate I mean the freight rate including the compressing allowance. I took that rate through its variations on down to the present time, and find it is now 83½¢. The amount of increase is 29½¢ per 100 pounds, which is 55% increase (R. 1255). Under the heading "net railroad rate on cotton," I have taken the through rate, extracted from it the amount of the compression allowance that the carriers would make, leaving myself only with the carriers' net revenue. On June 24th, 1918, that was 44¢, today it is 65½¢. The increase, therefore, amounts to 21½¢, or 49%. In the third block, I have shown the variations of the compress allowance which, of course, gets the result that I spoke of, an increase of 80%. On page 3, I have established the rate from Texas common points to Texas ports, local delivery (R. 1256). I have worked that out the same way and it shows that the Railroads' gross revenue increased 57% and that the increase in the compress allowance is 80%. On page 2 I have taken a different situation, from Oklahoma points to Texas ports for local delivery. That shows an increase in the freight rates of 48%, in the gross rates, 43%, and still 80% in the compress allowance. On page 1 of the exhibit, I have used the rates from Oklahoma to Carolina mill points, using Greenville, South Carolina, Ashville, North Carolina, and Charlotte, North Carolina, as destinations. That shows an increase in the gross rates of 36%; an increase in the Railroad's net revenue of 31%, with an increase in the compress allowance of 80%. The Carolina rates are made joint; they are furnished in the sheet of a proportional rate to Memphis with another section of the tariff which adds arbitraries to the Memphis rate to make through rates. On June 24th the rate was 99¢; on June 25, 1918 $1.44 and on August 26, 1920, $1.49 (R. 1257). On

page 1, the rates that I used from Oklahoma is the main group, of which Oklahoma City is representative, the group that covers the largest part of the city. On page 2 I used [fol. 385] the same. In no instance has the freight rate gone up 80%.

The second proposition under our consideration of these compress allowances is: Does it fairly represent the cost to the compress of performing those services with the carriers. That feature will be handled by some one else.

The third question we inquired into is: Does it fairly (R. 1259) represent to the carriers the benefit which they get from the process of compression; in other words, do they pay more for the compression than it is worth to them (R. 1260).

(The objection to a question as to the relation between the benefit of compression to carriers and the length of hauls was made that the propriety of the compress allowance was not at issue, and the evidence was admitted subject to exception.) (R. 1262).

(The transcript of the testimony of Witness J. J. Morrisey in Docket 11,965 was offered in evidence as an exhibit, and being objected to on the grounds that it was hearsay and not binding on parties who were not in the previous proceeding, was rejected until effort should be made to get Mr. Morrisey to testify.

Exhibit A-60 is a photographic copy of the States of Texas, Oklahoma, Arkansas, Louisiana, and a part of New Mexico, which is the cotton district embraced in this proceeding. The map is prepared and published by the General Drafting Company, Incorporated, 6 Church Street, New York (R. 1269). The triangular stops are compresses. The points that are marked with a circle were indicated on the original map as concentration points. Compresses are located at those points (R. 1270). The information reflected on this map is correct according to my best knowledge and belief, and I have looked it over pretty carefully (R. 1271). As to the compression of cotton for the account of the car- [fol. 386] riers, the option of s-lecting the compressing point is entirely with the carriers in Texas. If the shipper insists on making the election, and if it does not conform [fol. 387] to the wishes of the carriers, he would be charged

the full amount of the compression. The general custom is that the owner of the cotton in selecting a concentration point may select the first compress in (R. 1274) either direction. He has the right to have the cotton concentrated at some other point than the point at which it may be compressed, in the direction towards destination he may select any point for his concentration, whether the first compress or not. There are cases where he may obtain the service of concentration which would involve indirect haul or back haul. In Oklahoma they have what is commonly referred to as the Four Point system; they select four points, one in North Central Oklahoma, one in Southwestern Oklahoma, one in Central Oklahoma, and one other point, in fact I think there are five now, and the shipper of cotton in a general way may concentrate at any one of those five places (R. 1275). He also has the option of concentrating at the compression point. I am not familiar with the rules in Louisiana and Arkansas. I have an exhibit which shows a list of the interior compress locations with the names of the members of the companies, capacities, and date of establishment.

Mr. Fulbright: (The statements as to the ownership of the compresses should be disregarded, as the witness cannot testify to that. I do not know whether or not those compresses are still in operation. The capacity means the amount of cotton they can store in sheds) (R. 1278).

WITNESS J. T. STOCKTON, JR., RECALLED

I have jurisdiction over the assignment of ships to berths at the Houston Compress Company wharf. The first two days prior to the beginning of the first half or of the last half of the month at which the majority of the steam- [fol. 388] ship sailings from the Port of Houston are made, the various steamship operators make a written berth application to me as Manager of the dock department of the Houston Compress Company, requesting an assignment for a specific steamer, stating that their steamer has left a certain port on a certain date and that it was their idea to have this ship available at the port of Houston for load-

ing beween specific dates. After all of these applications are received and the amount of business that each operator will have for these steamers determined, assignments are made by me to berths at the Long Reach (R. 1283) dock. It has always been my policy or practice to endeavor to give the operators the same berths at this dock each month. This is due to the fact that they maintain an office and telephone service there in their own name and also to avoid moving their equipment and things of that sort on the dock proper. I do not receive any instructions from Anderson, Clayton & Co. or from the warehouse department of the Houston Compress Company as to where I shall berth ships. I have no information as to what part of the warehouse cotton may be located in before I allocate a ship to a given berth. I do not take into consideration the location of cotton in the Long Reach warehouse (R. 1284). There is a portion of cotton delivered in cars on the wharf of our company. That fact has nothing to do with what berth I take for a ship. It is very rare that the ship will shift from one berth to another to obtain cotton from our warehouse. They shift only due to the advance arrival or the delay of the steamer or to bad weather conditions, but this is not at all times practicable. It is my policy to always utilize the Long Reach dock facilities to its utmost capacity, and to keep each one of the four berths at all times occupied. When the four berths are occupied at all times, it is impossible to make a steamer shift from one berth to the other. We have no contract whatsoever, or other arrangement, with the steamship lines for the handling of the cotton by the steamship employees between [fol. 389] the storage point of the cotton in the warehouse and the point in the loading berth. We have no arrangement whereby the steamship employees bring cotton out of the warehouse (R. 1285). We have no contract of any character with the steamship lines or steamship agents. For the privilege of docking at our wharf, we charge a ship over a thousand gross registered tons $50.00 shed hire, and ships under a thousand gross registered tons $25.00 shed hire. We make a docking charge of ½ cent per gross registered ton per day for the first ten days. The next ten days is free, after which the ½ cent charge becomes effective again. Similar charges are made at other

ports, but not the same rate. The rates may vary. Shed hire charges are made at other places than the port of Houston. I have charge of the department that supervises the berth space (R. 1286). We make no restrictions against a firm's business, regardless of what firm it is, who wants to send cotton to my place; we are glad to handle it. The steamships load cotton at those ships which is shipped for export by other firms than Anderson, Clayton & Company. A wharfage charge is assessed against each -ale of cotton that moves over the dock regardless of ownership. That is in addition to the charge of the ship. The wharfage charge is 2¢ per 100 pounds for cotton that moves in cars or from the warehouse into the ship and 1¢ per 100 pounds for barge cotton (R. 1287). That is the general charge at the Port of Houston at the present time. I think the charge at Galveston is the same. We receive no applications for berth space from anyone else other than the steamship. I do not consult any other persons or any other concern in the assignment of berth space. When I make an assignment of berth space to a ship, I have no information at all as to where the cotton may be located or how it may come to that ship (R. 1288). I do not know whether it will come from the warehouse of Anderson, Clayton & Co., or out of some other warehouse, or by rail. I handle cotton at the wharf that comes in by rail from the interior. I should say that there is just as much cotton moving through Berth 4, which is on the extreme South end of the plant, as there is through Berth 1, on the North [fol. 390] end of the plant, and the same applies to either berth 2 or 3. As far as my policy is concerned, it is a question of where we can most conveniently handle the ship at the time the application is made.

Cross-examination:

I do not know positively what proportion of the cotton which moves over our piers is Anderson, Clayton cotton, but I would approximate it at 60 percent (R. 1289). Berth No. 1 is occupied as a rule by Lykes Brothers-Ripley Company, the French Line, and any other line that I can conveniently put in between the steamers of the other two lines. Mr. F. A. Dunlap is the agent of the French Line, and represents several lines in addition. Each allocation is made for each

specific steamship, not as regards the line. The first half sailing is the sailing from any port any time in a 30-day month between the first and the 15th, in a 31 day month between the 1st and the 16th inclusive. The last half, from the 16th to the 30th, in a 30-day month, and from the 17th (R. 1290) to the 31st in a 31-day month. Midnight of the last day mentioned. When the vessel of the Larrinaga Line, for instance, is in a position where they can tell us about the date of arrival for the first half of the month, they write us a letter that they want space for the Minnie de Larrinaga. They tell me the expected due date of the steamer at Houston and the date at which they expect to sail her and the date they would like to have that steamer at our wharf. They do not tell us the full quantity of cotton that they have booked, but they estimate what they intend to move over to our facility. The other man that uses berth No. 1 advises us about the same time of the expected arrival of their vessel. I would allocate to the Minnie De Larrinaga berth No. 1 on a certain date (R. 1291). I would limit the time according to the amount of cargo to be loaded aboard the steamer; she has a right to come in during that time, and she has no right to stay longer than that time. The cargo for each ship is placed in the berth allocated to the ship at a point designated by the ship clerk. If two [fol. 391] ships are using the same berth it is the policy of the steamship clerk to select odd bays, that is for instance, the cotton for one ship would be unloaded in Bay 17 and the cotton for the other would be placed in Bay 18 and so on (R. 1292). A bay is the distance between the posts that are on the water front center about 20 feet. Some of that cargo would be put in the compartment marked, back of Berth No. 1; that is purely a warehouse proposition, reserved for the warehouse. During the past season, we had a track No. 3, for which we used to make deliveries of export cotton in addition to Track No. 1. We stopped using Track No. 3 about the first of the year (R. 1293). I am positive that cotton has not been received during the month of April on any other track than Track No. 1. When it was received on track No. 3, it was trollied over. To truck it would be approximately 291 feet. The Anderson, Clayton cotton like car cotton is placed at a point in the berth designated by the steamship clerk. Presumably it originates from

some part of the warehouse, and has previously arrived, been sampled, marked, compressed and placed somewhere in the warehouse (R. 1294. The cotton doesn't necessarily have to wait the arrival of the steamship to be placed shipside. That space is available for it. It can be placed shipside at the time it is booked. The port rules state that the ship has the privilege of concentrating its cotton in the berth 15 days prior to the arrival of the ship. We are bound to do that on request of the shipper. If one berth has been assigned the first half sailing for 3000 bales and the same man writes for another assignment, I would give it to him if I had the space. If he could not get it in No. 1, I would take care of him in No. 4, or No. 3. It is possible for the boats to load for the first half sailing, making more than one visit to our properties and receiving cargo from more than one berth. But it is not practical. It has happened on rare occasions. I have been in charge of the plant since [fol. 392] April 1st, 1923. I make the allocations personally for the account of the Houston Compress Company as an employee (R. 1295). After weighing it in my mind, I would say that the amount of business for Anderson, Clayton that I have handled at the dock is in excess of 60 per cent. as I testified; it is between 60 and 70 per cent. I could not tell the approximate gross amount. The statistician in my department is in possession of those facts. I think we handle something in excess of 800,000 bales last year, counting all of the cotton, not only Anderson, Clayton. There is a storage capacity in the second story. The first floor has [fol. 393] doors opening from the warehouse proper onto the berth, and the second story also has doors, but it is not possible to load cotton from the second story over to the vessel. The distance is too great; it has never been done (R. 1298). The home berth is a berth at which the steamer can tie up for repairs, or lie idle; he might go to the home berth first, or he might come to the Long Reach docks first. The Traffic Manager of Anderson Clayton books with the steamship agent 6,000 bales of cotton (R. 1300) and the steamship agent asks me for berth space. There is no communication between me and the man that books the 6,000 bales of cotton, in regard to the location of that cotton (R. 1301). I know nothing whatsoever covering the physical operations of the Houston Compress proper. I do not know

where the cotton is coming from at the time the assignment is made (R. 1302). I do know how cotton is unloaded on the platform back of the warehouse, and I do know what is done on the apron at the front of the warehouse. They do not permit me to go from the front to the back of the warehouse; I can walk through. The space marked berths 1, 2, 3, and 4, on exhibit A-33, is assigned in the berth downstairs but upstairs it is called a warehouse (R. 1303). There is a difference in the physical construction of the upstairs and the downstairs part of the building; the doors do not match, and there may not be the same number of doors or windows. It is not possible to shoot cotton down the chute from the upstairs to the berth downstairs; and the trolley line is the only lifting device between the warehouse above, and the berth below. There is an incline and a decline on the trolley at the ends of the plant in the press room (R. 1304). Cotton moving on through bills of lading in passing over the Houston Compress Docks is solely under my jurisdiction. and is unloaded by his department. All cotton that is coming into the docks, handled by the railroads into Houston, or from local compresses in Houston, passes through my hands (R. 1305). The through bill of lading cotton which I handled this past season, has all been from the interior compressed to high density; I do not know of any that was put to high density at the Long Reach Plant. We solicit business to come to our berth, but I would not say that we are in competition for that business with the [fol. 394] municipal wharf; I do not know whether the municipal wharf solicits business or not; I would not say that we are in competition with the other boats that have wharves on the Houston Ship Channel (R. 1306). The amount of business handled at the port, and the number of Steamship Lines serving the port, are such that I cannot physically handle every bale of cotton and every line that serves the port. We do not use the tonnage of Anderson Clayton & Company as an attraction for the solicitation of that business. I fix the charge that is made against the vessel for dockage or shed hire. I collect the money from the steamship companies for wharfage. That is a moderate amount for the season (R. 1307). We are satisfied with the charges as they are. They charge more at Galveston. It is possible to chute cotton from the upstairs floor of the Long

Reach plant opposite the vessel, down to the pier, but it has never been done because of the fact the Steamship's space is so small that it is always utilized for the steamers and there would be no space downstairs to operate (R. 1308). We do not load any Southern Steamship Company's Steamers at our wharf. Of the total amount of business that we handle there, about 15% comes in from the interior. (R. 1309). The total amount is in excess of 800,000 bales, and taking Anderson's place of business at 70%, that would be 560,000; that would leave 30% less for the other businesses, which would be 240,000. 85% of the 240,000 would come from other compresses in Houston, or local cotton sheds of the railroads here. It reaches our docks usually by railroad cars, or by dray, or by barge. The drayage business would be about 3% of the total, 3% of 85% of 240,000 (R. 1310). The barge cotton would be 15% of the 85% of 240,000; the balance would be car cotton. If cotton on a through bill of lading should be high densitied in transit, either at Houston Compress or at any other Compress, that would not be within my jurisdiction. I do not handle any compressing of cotton in any way in connection with my duties. [fol. 395] The second assignment of a berth to a boat during the course of its loading at the port, would not be a new booking. The dockage and shed hire charges would not be assessed on its second return. The second assignment, like the first, is made at the place that is available at the time the Steamer is due to arrive, regardless of where the cotton is (R. 1311). The second story over the wharf is not a part of the berth space at which the Steamship Agent will receive cotton. I know nothing of the operation on the trolley either inside or outside the warehouse. All I know is that the cotton comes down on the trolley and is taken off by the compress and is placed at a point at the (R. 1312) shipside designated by the steamship clerk and one of my representatives, who in turn designated the space to compress employees. The clerk or foreman in the emlpoyee of the compress department, making delivery of the bill of lading lot, will notify an employee of mine, the dock department, that he has completed a bill of lading lot of cotton for the steamship which has previously applied for space. My employees checks the cotton to see if there is the amount stipulated by the clerk or foreman of the compress department. He then

turns this cotton over to the steam ship. After it is counted by the steamship clerk, he gives me a non-negotiable receipt for the cotton (R. 1313).

WITNESS J. R. ASTON

I am connected with Weatherford Crump and Company, handling the fullfillment of their export shipments. Exhibit A-34 correctly represents the wharves, the warehouses, and compresses at the Turning Basin Compress and wharves, which is the compress of the Wheatherford Crump & Co. (R. 1314). The city of Houston owns Wharf 7, and wharf 8, and the Wheaterford Crump & Co. has no control over that space. Wharves 7 and 8 are loading berths for steamers; we have no control over the allocation of steamships at those wharves. At present the International Mercantile Marine, which operate the Harrison-Leyland Steamship Lines, Liverpool and Manchester, Agent Mr. W. F. Hunt have home berth at 7 and 8. At # 8 the Sgitovitch Steamship Company, operating Steam-[fol. 396] ers to Liverpool and Manchester and a shipping board line to Genoa, has its home berth (R. 1315). So far this season, approximately 57% of the cotton moving out of the Turning Basin Compress Company, moves out at some place other than dock 7 and 8, leaving 43% of the cotton from that facility to move out over wharves 7 and 8 at our facility. On Exhibit A-34, the facilities marked "Cotton Sheds, A, B, C," are distinctly separate from the wharves. The Port Terminal Railway has a track running alongside docks 7 and 8 for switching out (R. 1316). There is one track into the dock, and I have one track which supplies to dock, and there are two tracks alongside the dock. There are also tracks coming into various portions of the plant for inbound cotton and outbound cotton. We deliver cotton for steamships on wharves 7 and 8, which are closed wharves, walled in and sheded. When we desire to make a shipment of export cotton, I call up a steamship man and offer him the cotton (R. 1317). We enter into something like an engagement note with the Agent of the line who will handle our cotton. That engagement note usually carriers the notice "to be delivered alongside the

vessel or at our loading berth." About 50% of the cotton handled in those facilities is cotton of the Weatherford Crump & Company for last season (R. 1318).

Cross-examination:

The first information we get about inbound cotton is the arrival notice. We tell the railroad where to place the cotton for the operation of the plant. He puts it there if it can be done (R. 1319). We put it in a place where we can handle it most advantageously. When it comes in, we do not know what dock it is going on. We do know whose cotton it is; it is ordinarily concentrated cotton. I think that Weatherford Crump & Company received from the railroad a certain fee for unloading those cars (R. 1320). We move cotton from compress #1 to wharf #7 by hand truck; there is an adjustable platform over the railroad tracks for the hand trucks. The space between dock 8 and the south side of the water plant is about 50 feet (R. 1321). Dock #7 is 160 feet from Compress #2. A bale of cotton when it leaves the compress has to be hand trucked 160 feet when [fol. 397] it gets onto wharf #7. Wharf #7 is approximately 400 feet long, about the length of a ship. The ship may be half full of cotton and it might be necessary to truck it down to the far end of the ship; we are still alongside of the ship. It is possible that a carload of cotton can come in on the track alongside of the compress, be unloaded by us and put into the compress by trucking it 96 feet, compressed and trucked 160 feet and put on wharf #7. We might have to truck it over (R. 1323) dock #8, amounting to 400 feet. We have two compresses, one near #8 and one near #7. What I have said applies to cotton whether moving on a local, through, domestic, or any other kind of bill of lading (R. 1323). There are no changed conditions at Weatherford Crump & Company's (R. 1324) plant since the last hearing. It is possible for us to barge cotton from our plant to shipside. We do barge very little. So far this season, Weatherford Crump & Company has barged only 250 bales (R. 1325). We get the cotton from our warehouse or compress to the barge by a chute at the left end of wharf 8. The platform for the chute is a part of dock #8, and the cotton would have to be put there before we can start it down the chute. That portion of the platform

is an extension of the dock itself (R. 1326). The only purpose of barging cotton is to move it out to some ship located at some other place in the turning basin. If we had a ship berthed at wharf #8, we could load it direct on that ship without any more expense than it would cost to get it on wharf #8. The 57% that is not exported from wharves 7 and 8, part of it leaves by rail to the southeast and a large portion moves to other docks in Houston. We have not shipped cotton to the New England Mills this season. Quite a large portion of it went to the southeast. Of the 57%, a greater portion of it went to other docks in Houston than the proportion that goes out by rail (R. 1328). The total number of bales handled last season was about 200,000. For Weatherford Crump & Company, only 57 bales have been drayed out to other facilities at Houston. The balance of it was switched by rail. Weatherford Crump & Company have barged about 250 bales this season.

[fol. 398] Cross-examination (R. 1329):

It is 50 feet from the dock itself to the portion of our plant nearest to the dock. I should say that our maximum trucking distance from a remote point in Shed C, to an average point on wharf 7 would be approximately 1,900 to 2,000 ft. The shortest distance from Shed C to wharf #7 would be approximately 1,000 to 1,200 feet. From press #1 to wharf #8, the minimum distance is 420 feet (R. 1331). The nearest portion of the warehouse is 50 feet from wharf 8. The practices which I have outlined here have been in effect since the plant has been in operation; there has not been any change in the last year or two.

Redirect examination:

When we export cotton, it is always necessary to get the cotton out of A, B, and C warehouse or cotton sheds (R. 1332). We might have cotton from the far end of cotton shed A, B, and C, going to either wharf 7 or dock 8 for a steamer. We might have some from the middle of the same cotton shed. When our cotton is received, we have no idea as to what foreign destination it will move to or what wharf it will move from. If we were to press a given amount of cotton for the truck opposite cotton shed A into cotton shed A it might move out over wharf 8;

it might not move off of our wharves at all. If we press cotton in cotton shed C, it might move out from wharf 7, but it might move out somewhere else (R. 1333).

Recross-examination:

It is only 50 feet from the warehouse of press #1 to wharf #8; but there is no cotton that ordinarily makes as short a movement as that to the dock. By the physical conditions of the plant, it is possible, but practically only a very small portion of cotton in the plant could be that close to the docks (R. 1335). We compress cotton to high density ordinarily when it is shipped out, and not at the time it is received (R. 1337). I do not recall any cotton moving out to foreign ports compressed to standard density (R. 1338).

[fol. 399] WITNESS J. V. SCOTT.

I am Vice-President and General Manager of the Houston Compress Company. I have occupied that position since 1917. I am familiar with the facilities that belong to the company at Long Reach, and have been familiar with that property in a general way since it was constructed. In the early part of 1923, we started the construction of the Long Reach Plant, but construction was suspended before the cotton season started. In the spring of 1924, in March, the construction was started again, completing the wharf (R. 1339). My Exhibit A-62 is a picture showing the facilities in 1923, when the construction was stopped before the beginning of the 1923-1924 cotton season. The photograph was taken at the time we suspended construction work, I would say it was in July of 1923 (R. 1340). We were not berthing ships there and loading cotton in July. This photograph shows substantially the condition of the facility at the time of the former hearing in this case in October, 1923. The change that has taken place since in that facility is the covering of that part of it between the edge of the dock nearest the ship and the portion of the warehouse situated over the apron by the runway. The portion where the freight cars are standing in the photograph on the waterside is not covered (R. 1341). None of the apron is covered. The distance

from the apron, the outside edge of the warehouse, is 90 feet. The distance at the present time from the outside lip of the wharf to the main warehouse is just as it was in October, 1923. At that time, this apron or wharf was approximately 20 feet wide. (R. 1342). The total part that is constructed, upon which the freight cars are standing is about 30 feet wide (R. 1343). The open space shown in the photograph between the apron of the wharf, and the warehouse, has been closed up by a concrete floor; and we have constructed a covered wharf over that space. That covered part of the wharf goes to within 20 feet of the lip of the wharf. The covered wharf is 70 feet wide, and the open wharf is 20 feet wide. At the time of the former hearing, we did not have the trolley system complete. At the time the photograph was taken, the width of the uncovered apron was 40 feet (R. 1344). It is now [fol. 400] 20 feet. The width of the open space is 50 feet. Since the former hearing, there has been constructed another wharf back of the other warehouse as shown by the blue print put in evidence. Cotton coming into that warehouse for concentration at Long Reach is unloaded on the receiving platform, weighed, sampled and blocked away on the platform, and is held. It is held on the receiving platform, as shown on the blue print in Exhibit A-33, until the class has been returned and is applied on the bale. It is loaded on the receiving platform and trollied to the press room, where it is pressed to high density, packed and sent to a segregating room and segregated according to grade. It is then loaded on trolleys and trollied all over the warehouse to storage space (R. 1345). The segregating, separating the different grades or staples into lots of 100 bales or 50 bales is done in the press room. We have to store it wherever we have space in the warehouse. Some of it is stored in the downstairs part of the warehouse and some of it upstairs. There are 15 or 20 different grades to be stored in one compartment; that is the case in all the compartments all over the warehouse. The compartments are not used exclusively for the storage or concentration of cotton. Five compartments, 6, 7, 8, 9, and 10, are used for the storage of general commodities. Very small amounts of cotton are stored in those compartments (R. 1346). The compartments immediately above those on

the second floor are used for the storage of cotton. The general commodities stored are newsprint, cotton ties, etc. They are imported. We have never stored any flour in our warehouse. It goes to the ship's berth.

The Dock Department will not accept or sign for a complete bill of lading until it has all been delivered in the ship's berth by the compress. That cotton is put on trolleys out of the different compartments all over the warehouse, and trollied around to the docks, through the docks, and then taken off by the compress laborers into the berth where the steamer is docked (R. 1347). At the time it is placed in the storage compartment, we do not know where it will be carried out or what ship will take it. We do not even know whether it will go out on a ship nor where it will [fol. 401] ultimately go. Some portion of our cotton may be stored in the warehouse for a considerable period of time. In selecting a point for the storing of cotton in the warehouse, we do not take into consideration where we might be able to place a steamer to take that cotton. We could not do that (R. 1348). When a steamer takes a cargo of cotton out from one of our berths, that cotton is obtained from various parts of the warehouse. We distribute the cotton all over the warehouse for storage. We cannot pick out any one compartment to store certain grades. There is not enough cotton in any one compartment to take care of the shipment. Hand trucks are not used in delivering cotton from the warehouse to the ships. They are used for the purpose of segregating cotton and trucking out of cars, and trucking to trolleys. They are also used in trucking from trolleys on the wharves, and in trucking from trolleys when the cotton is to be stored away in the warehouse. It is not practical to carry on a system of delivering the cotton to the berth by hand truck and to operate the trolley system at the same time (R. 1349). They would conflict. We would have trolleys going north and south, and trucks going east and west, and also trucks going north and south. You would have to leave a good deal more space for trucking. Cotton taken from the warehouse between tracks 2 and 3, to be switched to shipside, is put on a hand truck and trucked to the trolley serving that part of the warehouse and trollied around to shipside and

taken off of the trolleys at the ship's berth by hand truck, and blocked in the ship's berth. In receiving cotton on our tracks, marked 2 and 3 on the blue print, we make a large number of empty cars. We could reload those cars at the receiving platform and switch cotton out on track 3 and have it switched back on track 1 to the wharf. Cotton is never hand-trucked from the warehouse described between track 2 and 3 to the loading berth (R. 1350). It is not hand trucked from the upstairs of the warehouse to the loading berth. Steamship employees are not permitted to come into the warehouse to gather cargo. At the time of the former hearing in this case, a part of the warehouse was allocated to the receipt of steamship's berths, and made a part of the berth. That part was the part between the [fol. 402] so-called dead line and the dotted line of the warehouse on Exhibit A-33, it is 40 feet and was used to assemble cotton for steamers. There was a wooden floor 40 feet wide, the entire length of the warehouse where cotton was placed for steamers. The floor in the west of the warehouse is concrete, and this space was marked off by a heavy line the entire length of the warehouse. In using that as a part of a loading berth, even though the cotton was roped off, the longshoremen would get hold of the wrong cotton many times, and we had to go to a great deal of expense watching it (R. 1351); and we were always in fear of the cotton getting away from us that warehouse reecipts were out against. Warehouse receipts are issued in some cases on 100-bale lots, and some by carload lots. They are negotiable, and the cotton is not moved out of the warehouse until they are surrendered; the cotton is not even moved to ship's berth until the warehouse receipt is cancelled. As a warehouseman, our responsibility attaches as long as that receipt is outstanding. It is not practical to assign to the steamer a portion of our warehouse in which there is also stored this cotton against which there are negotiable receipts outstanding. We could not afford to let the steamship people come into the warehouse (R. 1352) because we would have no protection whatsoever if our warehouse was left open to longshoremen or anybody else employed by the Steamship Company who could come in and out. They work the berth at times when our plant is closed down, on holidays, Sundays and at night. The

doors between the warehouse and the dock have to be closed on account of insurance regulations at night as well as for our own protection. There has been no change in the original warehouse since the last hearing, being that part of the warehouse marked Compartments 1 to 10 on Exhibit A-33, except that a wooden floor that was used in the old space when cotton was assembled for ships has been torn up and concrete floors put there in place of it (R. 1353). The second story of the original warehouse is just as it was. There is a second floor in the wharf house; it is not used as a part of the wharf. We took up the [fol. 403] matter with the Steamship Agents and Stevedores of allowing us to utilize a part of that second story as berthing space, and they took it up with the longshoremen, and refused to accept cotton in that part of the warehouse. We do not deliver any cotton in the second floor of the house built over the wharf. Anderson Clayton is not the only customer we store cotton for. We store and compress for the public in general (R. 1354). The greater portion of our business is the cotton of Anderson Clayton & Company. Our company has another plant located at Houston. There has been no change in that situation at the other plant. Our company still operates the other plant and concentrates cotton there (R. 1355). The accounts of the Houston Compress Company are kept separate from the accounts of Anderson Clayton & Company. The Anderson Clayton Company account is handled like any other customers'. It is handled by written orders from them as to shipments coming in and shipments going out. I direct the affairs and policies of the Houston Compress Company. The Dock Department, Mr. Stockton, would select the space available for berth space for the steamers (R. 1356). Anderson Clayton Company does not give me any directions as to how I should handle the business in running the compress, except they have pressed us pretty hard for getting shipments out for them; we didn't have any room at shipside, and they have had to keep after us, wanting to know why we couldn't get their cotton delivered in ship's berth. We do not give any preference to Anderson Clayton & Company over the other companies in the handling of that business. We keep a separate accounting of the operations of the Dock Department, under the Supervision of Mr.

Stockton. It is a part of the Houston Compress Company. The Houston Compress Company is a Texas Corporation (R. 1357).

Cross-examination:

Mr. Fulbright is the Attorney and also the President of the Houston Compress Company. The Board of Directors consists of R. J. Cummings, R. C. Fulbright, N. D. Anderson, A H. Miller and myself I know Mr Will Clayton and Mr Ben Clayton quite well. The dock facilities have been completed now (R. 1358). We are not going to make any [fol. 404] more changes in the present facilities; we will probably have some additions; we have to put in berthing space for two more Steamers. The general plan of operation has been fixed. We have installed a trolley system, we have always used trolleys since the Long Reach plant was constructed. I do not see how we could handle the volume of cotton that we do handle by hand trucking; it would be too expensive, and too long a haul. The trolley system reduces the cost and is more efficient (R. 1359).

I suppose that cotton originating in Dallas and moving on a through bill of lading, passes over our dockets. I do not know what kind of a document it moves under. I do not think we have had any cotton moving on a through bill of lading that has been high densitied in our press. There may have been. The Railroad and Steamship Lines would know. We get our advice from them that there is cotton for a certain Steamer in the yards, giving us advice and billing to take care of it. We have had some cotton that came in by railroad on track 2 or 3, and was placed in the compress and compressed to high density and then carried through ship's berth. We don't know the origin of it, of course. We do compress it to high density and send it right on to the ship. We have always had trolleys. The introduction of the trolley system is no change in conditions as they existed last time, only to the extent that it has been enlarged and increased. It is physically possible to truck the cotton, but we wouldn't think of trucking it. We might have to truck it 1700 feet to get it to the ship's berth, and that means a trucker would have to go 3400 feet the round trip and he would make about two of those a day and be burned out (R. 1361). The truckers we pay by the hour. I do not get the billing, and do not know how such

cotton moves (R. 1362). It all looks alike to us. Some of it we may not compress, and that part would go directly to the ship's berth. It would go on track #1. Anderson Clayton & Company are one of our largest customers. They might buy 500 bales of cotton in the interior and send it to this press, it being of different grades and coming from dif-
[fol. 405] ferent sections, originating from some Texas common point. It would be delivered at our compress and unloaded upon arrival. But the compress does not get the unloading charge from the railroad for any business handled by it (R. 1363). There is an unloading charge for cotton that goes directly to the ship, which is performed by the Docket Department for the account of the railroad. The 500 bale lots would be unloaded at our plant. We sample it, and the samples are sent to the classing room. It is weighed before it is sampled. It is left on the range or on the receiving platform until the classes come back from the classing room; the classes are applied to the tags and the cotton is trucked to the trolley and trollied to the press room (R. 1364). After compression, it is segregated as to grades and staples and then distributed all over the plant. The weighing, sampling, compressing, and putting together in even grades, is done for the benefit of Anderson Clayton & Company. It is the service that is necessary to be rendered them for them to handle, sell, and dispose of that cotton to their advantage. If Anderson Clayton & Company sell for foreign shipment 100 bales of cotton out of that lot, of an even grade, they give us an order to ship. They don't say which compartment we shall ship it out of. They do not know where it is (R. 1365). We look in our records and find in what compartment their 100 bales of this particular grade they want are, and send that. It is trucked to the trolley, trollied around to the ship's berth, and unloaded by compress labor, and trucked to its place in ship's berth.

All of the Anderson Clayton & Company cotton that we handle is pressed to high desity on arrival. They ship high density cotton to New England. The cotton is handled in the same way whether the cotton is to go out to ship's berth, or whether it is going by car, (R. 1366) except the fact that the cars can be placed opposite the cotton and a Steamer cannot. Placing the cars opposite the cotton short-

ens the haul to the trolley and reduces the amount of labor necessary for us to perform that service.

[fol. 406] Mr. Fulbright: As Counsel and as President of the Houston Compress Co., I wish to make the admission that all of the stock of the Houston Compress Co., is owned by Anderson Clayton & Company.

The Witness: No cotton is moved from the second story and loaded on vessels from there. In a few isolated cases that was done. On Exhibit A-62, from the third runway, there is something that could be a skid (R. 1368). I don't know what that is. It is possible that a bale of cotton could slide down there, but it has to be trucked from the different parts of the warehouse. We elect the Board of Directors by voting the stock.

We do not permit the employees of the steamship company to come into Compartments 1, 2, 3, 4, to 10, shown on Exhibit A-33, to pick up cotton and take it in to berths 1, 2, 3, and 4. We do not permit anybody to go into any of our compartments (R. 1369). We would not permit railroad employees to come into storage spaces 1 to 10 and take cotton and put it in berths 1 to 4. We insist on doing that ourselves. I am General Manager of the Compress Company, which includes berth spaces 1, 2, 3, and 4, as well as other parts of the facility. We purchased the land on which we constructed the facility shown on Exhibit A-62 from the I. & G. N. Railroad; we ship cotton over all roads in Texas. The I. & G. N. had a yard at Booth, known as the Booth Yard before we built our plant (R. 1370). All cotton destined to our plant, as well as other cotton for compresses in Houston, would be switched into Booth yard. They switch the cotton out of Booth yard into our facility as we want it. They cannot switch in there when we are operating this trolley. The switching is done at night after seven o'clock when the plant is closed, and during the noon hour. There is some switching during the day, which does not interfere with the plant operation (R. 1371). In the past, we would not permit the railroads to switch when we were operating the trolley from the receiving platform; that is not true [fol. 407] now. We are using track 3 now for switching during the day when the trolleys are in operation, and they can switch any time during the day while the trolleys are in op-

eration (R. 1372). Track #2 will be used when certain construction is finished there. We are not using track #2 at the present time; we have used it. The railroad can switch on track #2 when we are operating the trolley, but we would have to close down a part of our operation (R. 1373). Exhibit A-33 is correct as to the present construction of the plant, except that it is not complete; the extensions and platform are not completed. We do not now have an Island platform between the two railroad tracks; that has been taken out. About one-third of it is left. On Exhibit [fol. 408] A-33, the long compartment between tracks 2 and 3 is marked "Warehouse." North of that is a receiving platform. Between those two, there is shown on this Exhibit one track, #2. (R. 1374). Previously there were two tracks on that space, and in between the two tracks there was an Island receiving platform. That platform was about twelve feet wide; it was not used for the storage of cotton at all. In operating that platform with the trolley, the trolley would go around between that platform and the main plant; that would interfere with switching on what was then track #2. But at the present time, there is no trolley in there because the platform is being taken out. There is a trolley shown as a dotted line on the blue print under the 68 foot warehouse, that can operate to the ship's berth or the upper stories in the main warehouse. When the construction is completed, we will be able to switch #2 track while we are operating the trolley serving the outside warehouse; the trolley will either be elevated over the railroad track or double back over the 68 foot warehouse (R. 1375), and across over to the main warehouse over the track. Until that is done, it will interfere with the switching. But when the switching operations on track #2 are done, they will not be interfered with by any trolley operations at the time. That applies also to switching to the water front on track #1. We can change the trolley system at any time; we can elevate them (R. 1376). Prior to the construction of the part beyond the heavy line in Exhibit A-33, when the warehouse looks as it does on Exhibit A-62, the space from the dead line 40 feet to the dotted line, showing the trolley line down the warehouse, was used for ships' cotton. The Steamship would come in there and pick up cotton and truck it and load it on the ship. The change that has taken

place is that we have completed the dock. The change is that the ship's employees came into the 40 foot space between the trolley line and the water front in the spaces marked 1 to 10, but now come into the spaces marked [fol. 409] "Berths 1 to 4." We have not moved that part nearer to the ship; we have completed our dock. The difference in what we call the space between the dotted line and the heavy line in berths 1 to 10 on Exhibit A-33, and what we call berths 1 to 4 today is that there is only one door in each one of those compartments (R. 1378) and there are many doors in the ship's berth. There are fire walls in the compartments, 1 to 10, ten fire walls in the warehouse and there are four in the ship's berth. The walls were there before we extended the berthing space (R. 1379). The lines on Exhibit A-33, separateing the compartment designated sections 1 to 10, represent the walls and fire doors between the compartments. There are fire doors in those walls. The walls were in the building in 1923, and they are still there. No change has been made in them (R. 1380). The marks on the floor of the warehouse at Long Reach, and on the posts, gives the post location for cotton; the cotton is in no case marked the same as those marks. They do not signify a mark that will be on the cotton. The marks on the floor or on the walls in chalk indicate the grade, but the marks on the posts indicate the post location (R. 1381). There would be 15 or 20 different grades of cotton in one compartment. We would utilize all of the available space at the particular points marked M-C-D-X for cotton marked the same way (R. 1382).

Anderson Clayton & Company have nothing whatsoever to do with the handling of customers' cotton. The Houston Compress Company is a separate organization, separate accounting, etc. It costs $8.10 per car to move cotton of the Farm Bureau from the Fifth Ward Plant to the Long Reach Plant to shipside. That is the switching, and we pay it (R. 1383). The Houston Compress Company has no contract with the Farm Bureau (R. 1384.)

Mr. Fulbright: Our arrangement with the Farm Bureau includes a charge of $1.15 for the total handling, that means the compression, concentration, and the movement down to shipside. It is a verbal contract, a tariff. It is what we pay all the time (R. 1385). We have no written contract

with them and I do not know whether there is an understanding between Anderson Clayton and the Farm Bureau [fol. 410] that, in the event, the one rate plan goes in, they will reduce the charges 18¢ per bale, at the Fifth Ward Plant. I will neither affirm nor deny that there is such an arrangement.

The Witness: The trolley system is partly a labor saving device (R. 1386). I am not posted as to what it cost us to store a bale of cotton. I have made up no definite figures. There is no unloading allowance from the railroads to the Houston Compress Company for unloading cotton. I refer to merchandising cotton (R. 1387). I do not know what goes to Anderson Clayton & Co. No allowance goes to the Houston Compress Company except cotton that goes directly to the Steamer. We charge Anderson Clayton & Company for handling their cotton. I do not know whether they file a claim with the railroad and get it refunded or not (R. 1388). We have shipped several thousand bales to Russia. When we store it, we do not know where it is going until after it is delivered to the buyers. It is turned over to us by one of our customers for account of the Russian, or any other customer, and we do not know the final destination of the cotton until it is shipped (R. 1389). There might be other shipments to other foreign countries that would receive the same service at the compress as far as patching is concerned. I do not know anything whatever about the Russian cotton, that is different from any other; all cotton is packed. Bills of lading for the Anderson Clayton cotton are made out at their office I suppose. They give us a shipping order along with the cancelled warehouse receipt, directing us to either deliver it to shipside or load it in cars, and when that is done, we notify them of loading; the Western Weighing Association notifies the railroad of the car number, and Anderson Clayton Company then attends to taking out the bills of lading. If we were going to load cotton out in a car, referring to Exhibit A-33, we would utilize the trolley service to move that cotton within the warehouse out to the platform where the cars were spotted (R. 1390). The complete entire plant service would be performed by the trolley delivering it to the wharf where we would load the cars. We load the cars

on the loading platform. It is our duty to load it in the car (R. 1391). I know nothing about a statement sent out [fol. 411] by Anderson Clayton & Company to the railroads as the basis for the refunding of charges to Anderson Clayton & Company at the Houston Compress Long Reach Plant for this intra-plant service (R. 1391). I know of no negotiation with the railroads for the refund of the intra-plant cost of delivering to shipside (R. 1392). We store cotton in the Long Reach warehouse for several customers besides Anderson Clayton & Company. Kenworthy & Company is one of them. We handle a large volume of round bale cotton in that warehouse for Anderson Clayton & Company, some for the Texas Farm Bureau; the latter is a small amount. We do not store round bale cotton downstairs. It could be done, but we don't do it. If it were stored in Section 6, opposite berth #3, and sold for export, in some instances we would load it on a trolley and trolley it to berth #3. It depends on the operations of the trolley as to whether we would try to truck it through #3; we have never had any operations of that kind. We have hand trucked cotton in some cases (R. 1394). There are general commodities stored in compartments 6, 7, 8, 9 and 10, and compartment #1 is used for segregating cotton or for the press. The majority of the cotton is stored upstairs in a warehouse served by track #3. There would be nothing to prevent our storing the general commodities upstairs and the cotton downstairs. Round bale cotton does not have to be compressed any more after it leaves the gin; in the warehouse it is merchandised like any other cotton when it comes to us (R. 1396). I am not prepared to give any figures on the cost of operation in regard to the relative cost of transporting cotton from Section 6, opposite berth 3, to berth 3, and delivering it to the Steamship, and the cost of transporting the same bale of cotton from section 6 to a railroad car. Cotton in Section #3 which is going to a ship in berth #2 would be trucked to the trolley, and trolleyed down around (R. 1398) to the berth. There is only one trolley in Section 3. It runs from the press room and makes a lap of the warehouse. It does not run in both directions at that particular point, but it does come [fol. 412] back the other way; it can either come back around by the receiving platform, or it can come around

through the Steamships' docks. Cotton in Section #3, to go to berth #2, would be put on the trolley in Section #3, and would move through section 4, (R. 1399), and then it would move through Section 5, and all of the other sections, going through section 10, and then coming back again. It switches onto the trolley in the berth in front of the press room. That makes a complete lap of the plant; we don't have much of that. We have in a few instances trucked cotton from space #3 to berth #2 (R. 1400). We would make the same operation in getting cotton from Sections 1 and 2 to berth 2 as we would from Section 3 to berth 2 (R. 1401). There is a switch in 5 and the cotton would go through section 5 out on to the trolley opposite the receiving platform and then around the press room on the trolley to the berth. Cotton from Section 3, moving to berth #2, would not pass through #1. I am mistaken about the trolley coming that way; the berth trolley runs in the opposite direction from the trolley down through the warehouse. The cotton would be switched into the blue line at this end of the warehouse, and come on around. The blue line is the trolley line that runs down through the ship's berth at the opposite end of the compress. That is in section 10 (R. 1402). From Section 3 to berth 2, we would move through Section 10. I would say that 5% of the cotton going to the berths would probably be trucked; there would be a small percentage that would be going for this berth that could come out of this compartment. It could be trucked right from Section 3 to berth 2 (R. 1403). The cotton for berth 2 is kept all over the warehouse. There is no cotton stored for any of these berths. It may come from any part of the warehouse to any one of the berths. There could be some cotton in Sections 2 and 4 which is going to berth 2. In a case of that kind we would truck the cotton to the berth (R. 1404). As long as we could get the cotton past this so-called dead line by truck, [fol. 413] we could get it into the ship's berth. We have a further duty to perform, and that is to place the cotton in that particular part of that berth that is designated by the Steamship Agent to receive it. There could be cotton in berth 2 for two different ships. We load cotton on railroad cars sometimes which is going for export (R. 1405). I do not know of any cases where cars were switched from track

2 on to track 1 to the dock. It would be more economical to load it in cars to the berths rather than to try to truck it to berth. The trolley operation would be cheaper, than loading it on to cars and having it switched and a larger volume could be handled. I am not prepared to say what the cost of trolleying cotton is. I have not recently made any study of that. We could not have used trucks at that plant; the plant is not designed to truck cotton, certainly the volume we had and we had to take that into consideration in putting the trolley in, the volume of cotton we are handling could not be handled by truck or railroad cars. I am not prepared to answer at this time whether or not I have made any study of the cost of transporting cotton by trolley (R. 1407). I do not know anything about the prices charged by the Stevedores for trucking cotton. We load the cars going out to other compresses. We high density cotton as soon as it gets in the plant. The average load in one of the cars is 75 bales to 100 bales. Seventy-five bales go in a 36 foot car; 100 bales go in the 40 foot car (R. 1408). After we are furnished with a report from the classification room, we decide what compartment to put the cotton in. We mark it with letters to show its grade. When we get an order for 100 bales of a certain grade, we can select it from any compartment as suits our convenience. We load it on the trolleys where we can get it (R. 1410). It does not matter to us where we get it, if it is more expensive and consumes more time, that makes no difference. It is approximately 50 or 55 feet from the trolley in compartment #3 to the trolley in berth #2. There is a door through the so-called dead wall at the center of compartment #3. If we had a bale of cotton immediately adjacent to the trolley in compartment #3 and the space immediately adjacent to the trolley in berth #2, and opposite there, leading in to compartment #3, was as-[fol. 414] signed to a ship then loading, we would put it on the trolley in compartment #2 and trolley it down to compartment 3, and truck it. If it was located in compart-partment #3 opposite the door, it would be trucked into the berth and blocked away inside of the berth where the Steamship Clerk (R. 1411) attends to it. If all the space allotted to the ship was built up except space in which you could put cotton immediately adjacent to the trolley, we

would have to put it in some other place (R. 1413). In trucking from the edge of the aisle in compartment #3, opposite the door to the storage space in berth #2, you would have to truck approximately 75 feet. It is about 55 feet from the trolley in the warehouse to the trolley in the berth. Section #3 will hold approximately 5,000 bale-tiered, 3,000 bales on the floor and 2,000 on top (R. 1414). The 40 foot space between the trolley and the dead wall is now being used for compress supplies, such as bands, buckles, twine, etc., and also for short making grades bought during the season (R. 1415). I do not know about the cost of the trolley movement per bale. I would say that 65% of the cotton would be stored upstairs, and it is hard for me to say just what percentage would be stored in the main warehouse. There would be about 15% stored in the 68 foot warehouse, and probably the balance of it would be in the downstairs main warehouse. There are only four compartments downstairs that are used exclusively for storage (R. 1416). The cotton is trucked from the compartment upstairs to the trolley line, is loaded on the trolley, is trollied to the ship's berth and unloaded by the compress department labor, and delivered in 100 bale lots in the ship's berth. That cotton would probably come out of different compartments upstairs. We could not hand truck the cotton from the upstairs part to the ship's berth. We could not do any substantial amount of hard trucking and operate the trolley system at the same time, either upstairs or down. Anyone coming into our plant has to have a written pass issued by my office, and we do not permit people who come within the storage compartment. One reason it is dangerous is because of the danger of having tags switched on the cotton. We are responsible for the proper identification of each bale.

[fol. 415] The samples would not go along with that shipment; they are not available any more after the cotton is stored (R. 1418) away. We do not keep the samples (R. 1419).

Mr. Fullbright: In my statement that Anderson Clayton & Company owned all of the stock of the Houston Compress Company, I overlooked the fact that preferred stock has been issued since the former bearing which is prac-

tically all owned by outside interests. It is not voting stock. The directors have two qualifying chairs each. The rest of the common or voting stock is owned by Anderson, Clayton & Company, which is a joint stock association. Anderson, Clayton & Company have the right of control (R. 1420).

WITNESS C. T. SCHNELL

I am Traffic Manager for Sanders & Company, Houston, and have been connected with them since August 1st, 1919. Prior to that I had considerable railroad experience. Sanders & Company are back-from-the-water-front concentrators. From the viewpoint of my firm, the order of the Interstate Commerce Commission, prescribing the one-rate plan, would be damaging (R. 1421). There is a great deal of cotton that comes in through flat, passing an interior compress, not at our orders, but in buying the cotton the freight bills accompany it and we must take it, and in taking it we are increasing our transportation charges 12¢ per hundred. The Texas Intrastate rate is the same on flat and compressed cotton, but when you put it to shipside it is an interstate movement and therefore the interstate tariff applies and the 12¢ penalty is attached (R. 1423). In the second place, between fifty and sixty percent of the cotton bought by Sanders & Company has been previously concentrated, and therefore, since the one rate plan is put in, it will force us to pay that second concentration penalty which would increase our rate from 83½¢ to 87¢. If the cotton has not passed a compress and has not been previously concentrated, so that under the order we would be [fol. 416] entitled to recover as a concentration refund the amount of our cost of delivery from the press to the ship, I would have to consult my freight bill which represents the stock on hand, and, since there are five roads into Houston, and since I would have (R. 1424) five different classes of expense bills, I would naturally have to file five different sets of claims and have to divide that up proportionately; it would be a great expense and would increase my expenses four times greater than it would be. If some portions of those split portions had been previously con-

centrated, I would have no refund coming to me then. It would be a very impractical thing for me to get my refund back. The situation with respect to Sanders & Company would be the same as the situation with any other back-from-the-water-front concentrator (R. 1425). I attend to traffic matters for other firms also, John S. Cochran, Cooper & Day, Oliver & Miller, Emerson Cotton Co., J. M. Ebel & Co., and Sample & Yervey. They all concentrate back-from-the-water-front. The same damaging results would attach to the bulk of these firms. In making up our claims for the refund of this concentration charge, we would have no way to determine from the face of the freight bill whether it had been previously concentrated or not, until the Railroad turned me down. There are a few shipments, where I know that they do concentrate, and I pay a little attention to that freight bill. There is no difference between the freight bills where the cotton is concentrated and the freight bills where the cotton is not concentrated, except that I am (R. 1426) familiar with the shippers and know the shipper of all that have used concentration. I do not know what trouble and expense the interior concentrator at Waco for instance, has in getting his concentration refund. On a shipment from Greenville, Texas, to my warehouse at 80¢ per 100 pounds, if I am going to export it and take a through bill-of-lading, I have to pay 8¢ a [fol. 417] hundred to get it to shipside, and then I have paid total transportation of 88¢, when I should pay only 83½¢, so I am entitled to a refund from the carrier of the difference between 88¢ and 83½¢ and that is what the one rate plan will force me to do. As it is now, they have an 8¢ rate that you have to pay the local out and the local in and then file your claim, or you can ship it at $8.10 a car switching and forget the rest, whichever is cheaper (R. 1430). As a practical matter these refunds cannot be collected and we will pay the shipside rate to our warehouse and pay the cost of getting the cotton from warehouse to shipside.

Cross-examination:

At the present time, in delivering the cotton from uptown to shipside, I barge some — it, dray some, and switch some. I switch a very small percentage. It might be four

or five percent. I dray the greater percent, I would not say exactly how much (R. 1438). Sanders & Company's cotton comes from Texas, Oklahoma, Arkansas and Louisiana. This past season, the greater part came from Oklahoma and Arkansas (R. 1439). The second concentration penalty, the flat cotton penalty, and the inability to get refunds that I have described exists in the interstate rate. A concentrator in the interior, shipping on a through bill-of-lading to Europe, has to use the interstate rate (R. 1440) we will assume, and if he does, he will be subjected to those penalties, but he will not have to pass a compress. If the man at Dallas passes a compress at Greenville, he would be subject to it. I want the two rate plan so that I can get the cotton down here and at my own expense carry it over to the ship. We avoid those penalties at the present time by reason of the two rate plan (R. 1441). I have been with Sanders & Company since August 1st, 1919 continuously. Mr. K. K. Womack is Manager and a partner in Sanders & Company. Our present warehouse is on the water, but is not considered a water-front warehouse (R. 1442). We can get cotton there under the present arrangement at the 80¢ rate. To barge it from there would cost us about 17¢ or 18¢ per bale. We do no business at the Houston Compress. During the time since 1922, we [fol. 418] have been handling business in the same manner (R. 1443). One change in our business since 1922 is that we use the switching lines less and the dray and barging more. That is about the only change I know about (R. 1444). Texas Lines Tariff 29-C, A. C. Sanders, I. C. C. 190, giving Interstate Railway regulations governing the concentration of cotton at Houston, under Item 50, shows that cotton may be switched to Anderson, Clayton & Company, having been brought to Houston on the Southern Pacific from Dallas, be given the concentration privilege at Anderson, Clayton's, and then re-shipped to Galveston for the export over the I. & G. N. R. R., and the tariff provides that the Southern Pacific Railroad will permit the concentration privilege on that shipment of cotton, even if it did not handle the cotton outbound from Houston to Galveston. The same reciprocal routing provision was formerly published and applied on cotton reshipped from up-town or back-of-the-water-front warehouses at Houston

to the dock at Houston, but it was cancelled, I do not know why (R. 1445). I doubt that the Railroads will restore that reciprocal arrangement in Houston. Based upon 500 pounds to the bale, it will cost me 12¢ more to get cotton to the ship under the one rate plan than it does today (R. 1446). On about three or four percent of our inbound cotton, we declare for export and take the 83½¢ rate; about 96 or 97 percent we pay 80¢ rate and move it ourselves to shipside and pay the wharfage. It is cheaper to do that because the expense of filing claim and making the 83½¢ and the necessary record to go with it, the clerical hire, is so much more than it is simply spending a dollar to get fifty cents back, so I have opposed that method all the way (R. 1447). I bought a large amount of flat cotton at Houston last year. My percentage is running on flat cotton about 25 percent, but that is mainly cotton that the other seller turns over to me, or rather turns the expense bills over to me and I have to bear the burden. The cotton we bought in Arkansas, Oklahoma, and Louisiana, did not [fol. 419] move from those states to Houston flat, except from Louisiana where there is no compress intermediate. I have some couple of hundred bales right now which moved flat from the others. We move in from Louisiana about 40,000 bales; I do not know about the other states separately. I am opposed to the one rate plan (R. 1449). I want the 12¢ penalty removed. I believe that I would not prefer to have the penalty under the two rate plan (R. 1450). I file concentrations claims now on export cotton, I think on about three or four percent. On the rest of the cotton going to the dock, I do not want any concentration (R. 1451). If the one rate plan is put in I would be compelled to take concentration on all cotton to the docks. I think my cotton movement is pretty well divided between the drays and the barges. We have two presses, and the same is true at both places (R. 1453). Only that part of the Louisiana cotton that is this side of the compresses comes in flat. There is a long distance between the first Louisiana compress and Houston. There is no compress at Beaumont. That flat cotton is divided between Gulf Coast Lines and the Southern Pacific from New Orleans. All cotton from Shreveport is compressed. The 25% of

flat cotton I spoke of was strictly penalty cotton. A small percent of my cotton came from Texas this year, on account of the drouth. None of the Oklahoma cotton comes flat. A little cotton comes from Arkansas flat (R. 1454). I should think that the actual expense of getting cotton from the compress to the shipside is in excess of 3½¢ per 100 pounds. I did not understand your question; I am thinking about the one rate plan. Until I file my claims and keep all the records and the additional expense that goes with it, I will have to pay more than if I let it come at the one rate plan and bear all of the other expenses myself and leave the Railroad companies to rest when they deliver the cotton. I can handle it for less than 3½¢ per 100 pounds (R. 1455). On 96 or 97 per cent of our cotton the [fol. 420] railroad service ceased when they delivered it to us and I have nothing more to do with them. The only adjustment that I have with the railroad is on the 3 or 4 per cent that I do declare for export. They handle it down to the dock. If I switch it down, I pay the $8.10 myself and do not spend a dollar to get fifty cents back (R. 1456). In my experience with Sanders & Co. I do not think that we have shipped more than two or three hundred thousand bales to New England to my knowledge. We shipped to [fol. 421] the Southeast, all-rail, very little. This year has been my largest year with Sanders & Company in the Southeast and five thousand bales will cover that. The cotton we shipped to New England goes on through rate. We file concentration claims on that (R. 1457). I answered the question a little too fast. I have not filed a single claim on New England cotton. On the Southeast, I would file a claim. We do not get a compressing allowance on the flat cotton that comes in to us. If the bill-of-lading is the carrier's privilege of compression, I get it (R. 1459).

WITNESS W. L. CLAYTON.

My residence is Houston, Texas; my occupation cotton merchant. I am a member of the firm of Anderson, Clayton & Company. We buy cotton and ship cotton from points in the cotton producing territory in the Southwest. I had 32 years' experience as a cotton man on my own

account in the Southwest; I resided for twelve years at Oklahoma City and for the last ten years in Houston, but my experience in the cotton business extends throughout the cotton producing section of the Southwest (R. 1458-A). I am familiar with the methods pursued by cotton merchants in producing, handling, and distributing cotton. We have merchants who concentrate all of their cotton in the interior, some who concentrate all of their cotton at the ports, and some who concentrate a portion in the interior and a portion at the port. I understand concentration as a merchandising service to be the same as concentration as a transit privilege granted by the Railroad Company. I have studied the issues in this case and the Order of the Commission (R. 1459). Under the present two-rate plan, a merchant at Houston buying cotton north of Greenville for concentration at Houston would pay into Houston to the Railroad Company 80¢ per 100 pounds. He would ob- [fol. 422] tain from the Railroad Company 1¢ per 100 pounds for unloading of the cotton, making the net cost to him 79¢. If he exported this cotton at the port of Houston, it would cost him approximately 3½¢ to put it to shipside, making the total cost 82½¢. The merchant who concentrated his cotton at Greenville would pay 83½¢ to put his cotton to shipside on through bill-of-lading, which apparently makes an advantage of 1¢ per 100 pounds to the port concentrator, but in fact this is not the case. The 1¢ per 100 pounds is absorbed by the unloading charge which the Houston concentrator must pay to the warehouse company handling the cotton for him. The port merchant who utilizes port concentration buys a certain proportion of his cotton that has been previously concentrated in the interior, or given a concentration privilege by the railroads (R. 1460). He cannot determine what proportion of cotton he is buying of first and second concentration, because he often buys from f. o. b. merchants in the interior who have already concentrated a portion of it at some of the interior concentrating points. The primary gatherers of cotton themselves concentrate their cotton at compresses at the interior for the purpose of merchandising it to the shippers or exporters. They think, and I dare say they are correct, that by so doing they obtain for their cotton a better market price than under the former system of

selling it at the primary point in the interior. They concentrate at the compress, have samples drawn, split the samples, in some cases, sending one set of samples to a market like Dallas, for instance, and another set to a market like Oklahoma City, or perhaps one set to Dallas and one to Houston, and selling the cotton on the samples to the merchants in those markets. In recent years, there has grown up quite a business of cotton brokerage in these markets. I am informed that there are thirty cotton brokers in Dallas who sell cotton on samples in this manner. The broker will take the samples and sell the cotton; it is not often in round lots; it is mixed lots on samples (R. 1461) on the merits of the cotton as to grade and staple as [fol. 423] opposed to the other method of describing the cotton or rather selling it basis middling and naming the point fom which it came. There are not many farmers who use that method in Texas or Oklahoma, but there are many of what we term line gin companies, gin companies who have a number of gins, who buy the cotton from the farmer either in the seed or in the bale and concentrate it in that way and sell it in the manner I have described. There are also cotton dealers in these small towns, or f. o. b. merchants who, as I have said, handle it in the same way. If the port concentrator and the interior concentrator are both bidding for the cotton at the primary point, the interior concentrator calculates all the way from nothing to 25¢ a bale as the cost of concentration service by the compress company, which he pays to the compress company; it costs at Houston about 50¢ per bale. Therefore, if the two are competing for the cotton at the primary market, the interior merchant has calculated 25¢ per bale for the service and we at Houson have calculated 50¢ per bale for the service, making a difference of 25¢ (Record 1462) against the Houston concentrator. If the cotton has been concentrated by the primary gatherer before he offers it for sale, he himself has already performed and pays for that service, so that the Houston man must calculate still 50¢ per bale and the interior man nothing. It is necessary that each merchant concentrate his cotton in some way before selling it to the spinners or consumers. That is true because cotton is grown and merchandised primarily in many different grades. It is sold and consumed in even

running lots to the consumer. If the f. o. b. man has assembled 100 bales of cotton which he sells as of a certain grade at an interior point he has thereby performed a concentration service by getting that together. The port merchant must utilize another concentration or gathering service of the cotton at the port, because he has his facilities at the port. He has all of his arrangement for classing [fol. 424] and handling his cotton by the compress company, he is a port concentrator. He does his business in that way (R. 1463). No cotton shipper will ship cotton to his customers on somebody else's classification. He is going to class his cotton himself. The country storekeeper, [fol. 425] who has 25 or 30 bales of cotton, does his classification when he buys his cotton, but he will sometimes sell it to a man at Houston to be accounted for and classed and settled for as to classification on its arrival at Houston. Under the one-rate plan if the rate is made at 83½¢, for instance, we can use any rate, the point being that 3½¢ differential is abolished; the rate is (R. 1464) 83½¢; a Greenville man today goes to shipside for 83½¢. Under the one-rate plan the port concentrator would have to pay 83½¢ plus 1¢ per 100 pounds, making 84½¢. This 1¢ per 100 pounds is paid to a port compress for unloading the cotton from railroad cars on its arrival, so that under the one-rate plan, even on first concentration, the port concentrator is put at a disadvantage to the interior concentrator to the extent of 1¢ per 100 pounds. He does not get a refund from the carrier for the loading, if it is concentrated. The one-rate plan provides that every lot of cotton must have a concentration claim filed against it in order to protect the 83½¢ to the man back of the water front, and under the interstate tariff he is not permitted to collect that 1¢ from the Railroad if he files a concentration claim, so that he must pay 83½¢ to the Railroad plus 1¢ per 100 pounds to the compress, making 84½¢ to get to shipside against 83½¢ to the interior concentrator. If a cotton broker at Dallas has a certain lot of cotton at Greenville at the compress, and if the cotton is sold to the interior concentrator, the latter can assemble that cotton in such lots as he pleases at Greenville where it all is and ship it through without any additional cost. He pays no concentration charge, no transit privilege at all, being a

free first concentration (R. 1465). The Houston broker or exporter could do identically the same thing, but he would become an interior concentrator instead of a port concentrator. It would change the nature of his business. That is important. He not only does not get the concentration at his own facility, but cotton merchants who do not own their own facilities, but who live at the port market, prefer to have all their cotton come into the port where it can be at once placed where they can see it, supervise [fol. 426] its handling and classing and every operation connected with it (R. 1466).

Not only would the port concentrator be at a disadvantage as compared to the interior concentrator of 1 cent per hundred pounds even on the first concentration, but a small shipper at the port, having only two or three hundred bales at a warehouse, wanting to get that cotton to shipside under the one-rate plan, would be at a serious disadvantage in taking advantage of the concentration (R. 1468) privilege which the one rate plan would give him, because of the fact that he might have expense bills on the two hundred bales of cotton from half a dozen different railroads, whereas he has got to ship out over one railroad, and to ship out over one railroad he ought to load not less than fifty bales to the car. In the interior, Greenville for instance, there is only one compress. All the cotton is handled at one point, so that the lots can be accumulated and the cotton rate is an any-quantity rate, so that if he only has fifteen bales on one road he can ship out 15 bales on that road and get his concentration claim protected. Also, in regard to cotton which finds its way to the port uncompressed, having passed in transit a compress, in order to avail one's self at the port of the concentration privilege under the one-rate plan on such cotton, one would be penalized 12¢ per 100 lbs. because of the fact that the cotton is flat and has passed the compress. This is due to the fact that the shipper must make his concentration claim under an inter-state tariff which provides that penalty. His only other alternative is to deprive himself of the concentration privilege and deliver it at his own expense to the water front, 83½¢ in, plus 3½¢ to the water front, 87¢ (R. 1469).

We never make a claim against the Railroad Company for concentration at Houston on export cotton loaded at

the port of Houston. We never use the interstate rate. We use the intra-state rate because that rate is 80¢ per 100 lbs. less 1¢ for unloading, 79¢, which the shipper pays, [fol. 427] plus 3½¢ to the shipside, making 82½¢. If we made a claim under the interstate rate, the cost is 83½¢, so for obvious reasons we never make a claim. It is cheaper to do it ourselves. We save the 1¢ per 100 lbs. for unloading, as I have explained, and we save the delay in getting our money back on the claim, we save clerk hire in making the (R. 1471) record and keeping up with the claims and filing them with the Railroads. At times we can load 50 bales to the car, in which case the cost is 6.2, in other cases we only load one bale to the car and the cost is 8.1, so that in some cases we actually make a saving on the physical matter of transferring the cotton from the plant uptown to our compress at shipside while in others we do not. That includes the switching and handling in addition to which there is a charge for unloading on the docks. We never have a second concentration to contend with under the present two-rate plan. It is a merchants concentration and the railroad has nothing to do with it. Any concentration is for the benefit and advantage of the merchant (R. 1472). Concentration in the interior, is a concentration in the strict sense; it is also a merchants concentration only. If the railroads did not grant a transit privilege in the interior, the interior merchant could not concentrate, because it would be prohibitive for him to pay a local rate in, and another local rate out. It would make his freight rate so high as to put him out of competition with the port. At a large cotton producing point, where there was a compress, he could do a certain amount of concentration without having any privilege from the railroad, to the extent of the local cotton that he purchased (R. 1473). The interior concentration privilege is purely for the advantage and convenience of the interior cotton merchant.

On cotton which is concentrated a second time, under the one rate plan, the cost to the port concentrator would be 83½¢ into his warehouse at the port, plus 1¢ unloading charge, plus 3½¢ delivery to shipside, making 88¢, so that he would be at a disadvantage as compared with the interior man to the extent of 4½¢ on all second concentra-

tion cotton which we handle. I do not believe there is much so-called second concentration in the interior. I can. [fol. 428] not conceive of very much need for it. Where second concentration was taken at an interior point and double concentration at a port, the port would be penalized for the double concentration in the amount of four and one-half (4½¢) cents over the interior concentrator (R. 1474). The additional expense over the eighty-four and one-half (84½¢) cents, which the port merchant would have to pay out of his pocket, is due to the fact that it would be a second concentration in case he files a claim, but there would be nothing gained in that case because the penalty for second concentration would absorb the amount that would be returned. The penalty for second concentration is three and one-half (3½¢) cents (R. 1475). The rate plan would put the port merchant in the position where a large proportion of his cotton would have been previously concentrated without his consent and in such a way that it would be of no benefit to him. Our second concentration cotton is about fifty percent (50%) of our total volume of square bale business only at the port of Houston, according to our traffic manager. I believe that concentration and storage are considered the same (R. 1476). If the interior man took a first and second concentration and the port man took a first and second concentration, the port man would still be out one (1¢) cent per hundred pounds for the unloading (R. 1477). If there were a charge of three and one-half (3½¢) cents for the first concentration under the one rate plan, and a charge of three and one-half (3½¢) cents for second concentration, the interior merchant would pay eighty-three and one-half (83½¢) cents to shipside plus three and one-half (3½¢) cents for interior concentration privileges, making eighty-seven (87¢) cents, the port merchant would pay eighty-three and one-half (83½¢) cents plus three and one-half (3½¢) cents to get shipside, making eighty-seven (87¢) cents, plus one (1¢) cent for the unloading of his warehouse, making eighty-eight (88¢) cents, and would still be at a disadvantage of one (1¢) cent per one hundred pounds (R. 1478).

The through bill of lading privilege is very valuable to the interior merchant, principally on account of the saving in interest to him. He can get his money as soon as the

bill of lading is signed, whereas if he must wait until the [fol. 429] cotton is shipped to the port and he obtains a port bill of lading or an ocean bill of lading, he loses that interval of time. That is of substantial importance. The interest on a bale of cotton at twenty (20¢) cents per pound at an interest rate of six (6%) percent per annum is about one and one-half (1½¢) cents per day (R. 1479). The turnover of the capital is also of substantial advantage. One of the factors of limitations of the volume of business that any cotton merchant can do is capital. He borrows most of his money from the banks, but he must have capital to establish credit. A through export bill of lading practically insures to the interior merchant that he is through looking after the cotton and has his money. Another advantage is that the transportation company makes for him a through transportation arrangement; he does not have to provide any resting place or delivery place for his cotton at the port. He is not troubled about demurrage at the port. We ourselves have in one or two years paid very large sums to the railroad companies for demurrage. I think that the factor of possible liability for demurrage is of great importance as the question of being able to be freed from the responsibility to provide storage or handling facilities at the port. It seems to me that it is of substantial advantage to have storage provided in the railroad cars for the very large amount of free time that is given on the through bill of lading. I think that while the cotton is held under the free time under the export bill of lading, there is a common carrier's liability which carries with it the insurance of the common carrier. After the forty-eight hours free time on the local shipments, it would be only a warehouse's liability and not an insurer's liability (R. 1481).

Merchandising processes performed by the interior man are of no advantage to the port merchant who can ship cotton to customers only on his own classification. A great deal of cotton is sold not on description but according to [fol. 430] types which have been established with a mercant's customers for years, given a name, and the cotton classed equal to those types. It is very rare that a merchant, interior or port, will take some other merchant's classification in order to determine whether or not it came within

those types. It is of economic advantage to the industry that large storage facilities be provided for cotton, and also financing arrangements made for the convenience of carrying of cotton in large quantities (R. 1482). About eighty-five (85%) percent of the cotton crop is generally marketed by the grower within a period of three of four months. It will take about ten months to consums the same quantity. In the interim, storage space must be provided somewhere for the protection of the cotton, where negotiable warehouse receipts can be obtained for the purpose of financing and where satisfactory insurance can be obtained at reasonable rates. When shipments of cotton from the interior are delivered in the warehouse at the Houston Compress Company at Houston to our firm, we do not know when they will be shipped out or to what destination. The cotton comes in in many different grades. When we buy it we do not know of what grade it consists except on rare occasions. We usually buy cotton in the interior basis middling and ship it down to the ports and do not know where it is eventually destined until it is classed, and many times we don't know even then because in some years we carry large stocks of cotton which has not at the time of being classed been sold. In the selling of cotton for export to export markets, a cotton exporter has to make shipments to many different points at the same time, even under a small volume of business. My firm ships regularly to about fifteen foreign destinations and irregularly to four or five or six others. The orders from spinners are usually for certain particular types or grades. They are often partly for one type and partly for another type. In the case of shipments to Italy for instance one steamer might take for one shipper cotton for 15 or 20 different buyers or spinners (R. 1484). Our firm does not give any instruc- [fol. 431] tions to the Houston Compress Company as to how ships shall be berthed or where they shall be located or at which berth they shall be located to receive the cotton. In regard to why our firm has invested money in organizing the Houston Compress Company, we concentrate at our Houston facility all the cotton which we produce in Oklahoma and Texas and some of the cotton which we produce in Louisiana and Arkansas. The volume is large and the principal advantage to us in Houston concentration is the bringing of this large volume of cotton into one point under

one supervision, instead of having it scattered out among compress points in the interior of these four states. We also concentrate at Houston some cotton bought in New Mexico, a small quantity only, some bought in Arizona and some bought in California. We utilize the services of many steamship lines (R. 1485). We have no special arrangements with any particular line for giving a preference to that line. It is necessary for our firm to ship its cotton out at numerous berths or piers. Often we are shipping cotton to a number of destinations at the same time; it may be ten different destinations in one day or in a period of two or three days. If we have a warehouse with only one loading berth, we are at a serious disadvantage; we are at a disadvantage in a somewhat less degree with two, three, or four. If we had adjacent to our warehouse loading berths for all of the destinations to which we are shipping at the same time, then only could we move our cotton from the warehouse promptly to the loading berths and obtain an outbound or ocean bill of lading for it. Every day during the active cotton season from September 1st to March 1st, our warehouse gets orders for shipment (R. 1486) of cotton in excess of the capacity of our own loading berths. We must either let the cotton remain in the warehouse less interest at the rate of 1½¢ per bale per day, storage of about 1¢ a bale a day, and a fraction of a cent for insurance, or else load the cotton in the cars and move it to some other wharf. That is brought about by the fact that there are so many destinations to which cotton may go and there-
[fol. 432] fore so many different lines of ships that must handle it. There is hardly a day in the year when Mr. Kempner in Galveston could not put his cotton on a dray in the morning and get it to shipside to any of the customary destinations to which cotton is shipped and obtain a bill of lading for it on that same day or the next morning. I understand there are over 30 loading berths or piers in Galveston. If we should confine our business exclusively to (R. 1487) the loading berths of our Long Reach plant, we could only ship to 4 at one time and those berths must be relieved before we can proceed with other shipments. We ship cotton out by rail from our Long Reach warehouse to Galveston and there load it on ships. We also ship to New Orleans at times and load it on ships there. The ex-

pedition in the movement of cotton to points where a shipping document on which they can get money can be obtained is very important to cotton merchants as is the saving of interest, storage and insurance. Often at the end of a month we have on our books orders or old sales for large quantities of cotton to be shipped out on a bill of lading dated in that month, so that if our loading berths at Long Reach are full, we run the risk of defaulting on our shipments, and must either make arrangements for an extension of time or else move the cotton to some other loading berth (R. 1488).

The port concentrator must himself pay all of the charges incident to compresson and handling of his cotton by the compress, even including the cost of compression. It is true that the ocean steamship rates on high density cotton are 15¢ per 100 pounds less than on standard density cotton. The interior concentrator does not pay any charge to [fol. 433] the compress for the compression of his cotton. It is paid by the railroad company and is included in the railroad rate. That charge or allowance in Oklahoma and Texas at the present time is 18¢ per 100 pounds. It is my contention that this charge is exorbitant, and to the extent that it is, it gives the interior concentrator the opportunity to trade with the compress which handles his cotton for the concentration or merchandising service at less than the actual cost of that service. The interior concentrator in nearly every case has the choice of one or two points at which he may concentrate. The point chosen by him is the point at which the cotton is also compressed for the benefit of the carrier and paid for by the carrier. It therefore follows if the allowance received by the interior compress is a very attractive one, they are in position, and I contend that they do, to shrink that allowance by performing a service for the interior concentrator at less than the cost of that service (R. 1489). In some instances the service is performed free. In others it is performed for 15¢ per bale, and in others for 25¢ per bale. It is my contention that if the compress company should, as a consideration to receiving the designation of its plant as a concentrating and compressing point for 100 bales of cotton, for which it receives 18¢ per 100 pounds, turn around and give 2¢ per 100 pounds of that sum in cash to the shipper, the effect

and the result is no different than if that compress company gives the equivalent of that sum in free service to the shipper. The compression in transit service of an interior compress consists of unloading the cotton from the cars, weighing it, compressing it, and loading it back into the cars. It may be the same car or it may be a set of cars on the otherside of the plant, and the cotton then goes on to its destination. There is a substantial amount of additional service involved when cotton is given a concentration service for the merchant by the interior compress (R. 1489-A).

I do not think there is any general charge for compression at the ports, because it is covered by no tariff over which any commission has any jurisdiction, and I am afraid it is the subject of trading. We are supposed to get 75¢ per bale for high density, but it is the custom at Houston, [fol. 434] Galveston and New Orleans to make delivery to shipside out of that charge. The regular rate for standard compression, however, which is the service which the interior compresses perform for account of the railroad, is 60¢ per bale. That applies in Houston, New Orleans, and Galveston. The service of standard compression is a cheaper service than that of high density compression. A good deal more cotton can be put through a compress machine to standard density in a given time than to high density. The labor employed is the same, the number of men making the (R. 1490) unit cost greater for the high density than for the standard density. I can say there is a difference in cost of 15¢ per bale. In the interior I believe the interior presses which have high density attachment make a charge usually of 25¢ per bale, perhaps some of them 35¢ per bale, for performing the high density service at the time they perform the compression service for the account of the railroad. The additional charge is assessed against the shipper. The greater proportion of the cotton received by my firm at Houston is compressed to standard density before arriving here. No substantial movement of cotton comes into our Houston plant which passes an interior compress without being compressed (R. 1491). However, there is a substantial quantity of cotton which comes to Houston generally in flat form uncompressed which has passed a compress in the interior. Trade

custom extending over many years is responsible for this in the case of factor's cotton. Some farmers ship in to factors uncompressed. Some prefer to have their cotton go through to the factor in its original form. Therefore, when we buy this cotton in Houston from the factor, we must take it as we find it. Where we are shipping cotton from a short rate point, where the railroad will absorb only a part of the standard density compression, it is not of any advantage to our firm to pay an additional part or a part of that standard density compression. In those cases, I think it is the practice of my firm at times to direct that that cotton be shipped past the compress, because we cannot get the absorption of all of the compression charge and what we paid out would be just so much lost (R. 1492). Where the cost to us to get the cotton to Houston is the same whether it be compressed to standard density or not, there is no substantial difference so far as our ability to handle it. It is a little more desirable to have it in com- [fol. 435] pressed form, but there is not much difference. We do not instruct that it come through uncompressed. We have that right but we do not do so. It costs this firm at their plant approximately 50 cents per bale to perform all the merchandising service in connection with a bale of cotton without figuring any interest on their investment for our facilities. The calculation that it only costs a quarter at the interior is based upon the competition between the compresses in the interior which has kept their charge down and they are able to do so because they collect from the railroad company about 94 cents per bale, 18 cents per 100 pounds to be exact for compressing their cotton (R. 1493).

We compress cotton at Houston when it is to be shipped through Galveston. I am under the impression that we compress some cotton for the carriers at Houston. We get the tariff rate of 90¢ when we do (R. 1494). I do not think there is any substantial difference between the services performed in connection with the merchandising of cotton in transit at the interior points and the services performed for the same purpose at our plant. The method is not exactly the same, but I do not think there is any substantial difference in the cost. If so, it is more costly in the interior than at the ports. The method we use at

the ports is to unload the cotton from the cars on the receiving platform, weigh it, and then sample. It is left in the position in which it has been placed on the receiving platform until it is classed. The classification is then (R. 1495) applied to the tag on the bale, each bale having its own classification. The cotton is then trucked to the trolley and trollied to the high density presses, where it is compressed to high density. We use the same service and the same press when we compress to standard density, the only difference being that the side doors are not used for standard compression. After the cotton is compressed to high density, it is segregated in the press room and the room next to the press room and placed into marks of 50 or 100 bales of the same grade in each mark. It is then stored according to grade or mark, and when it is shipped out it is taken out 50 bales or 100 bales even running which is all in [fol. 436] the same place usually and sent to destination (R. 1496). I think that is substantially the method used by all port concentrators. The system used at the interior at those presses of which I have knowledge is different. The cotton is unloaded from the cars, weighed, sampled, tagged, and then trucked to a place of storage in the warehouse, at which point it remains until the shipper orders it out, not by grade or mark, but by individual bale numbers, so that the interior press must pick these bales out of all of the cotton which they have stored for that particular shipper. I think that is a somewhat more expensive service than the way we handle it of first segregating and storing according to mark and grade. I am talking now about concentration and not merely compression in transit (R. [fol. 437] 1497). In the compression in transit, there would be none of that storing back or selection of bales by number. It is also sometimes necessary in the interior press to tier the cotton, that is putting some bales on top of other bales, in times of congestion or heavy movement. If the shipper has 2,000 bales of cotton at the interior press, it is assembled from the various country stations and will be in a number of different grades or types; therefore, to take any given number out of that, you would have to pick over the whole amount and you have no way to segregate them according to grades and types, because they have not been graded before they were stored away. I

think that segregation at that time is a little more expensive than the way we do it, but I do not state that as a positive fact (R. 1498). The handling of the samples at the interior press is usually done as a part of the concentration service. The interior compress not only receives the cotton for the interior concentrator, receipts for it to the railroad, but in many instances it performs practically every merchandising service that the interior concentrator requires, short of classing, financing, selling and invoicing the cotton. They pay his freight for him, draw on him with freight bills and compression tags attached, surrender his bill of lading to the railroad company, issue for his benefit and use a negotiable warehouse receipt, take care of the cotton until he is ready to order it out, giving him in every case 15 days free storage and in some cases 30 days. When he is ready to ship out, he sends his list by number to the compress company accompanied by his compress ticket, they get his bill of lading signed for him and send it to whatever point he directs. They also of course sample the cotton for him and express the samples to him. In 1904 when I went to Oklahoma to enter the cotton business (R. 1499) the rate of compression was 10¢ per 100 pounds. We cotton merchants, according to my best recollection, paid the compressers for no service whatsoever. Even the storage was free, indefinitely. There was a general storage business of cotton done at interior compress points at that time. I do not think it was done to the extent that it is done today. The compresses had very poor storage facilities, and what the shipper got for nothing was worth nothing so far as storage was concerned. His cotton was usually damaged. Just the same [fol. 438] many of them left it there free of charge for long periods of time (R. 1500). Interior compresses today in Oklahoma issue individual bale receipts for cotton stored with them. I am not sure about the practice in Texas, because we have never, I believe, concentrated any cotton in the interior in Texas, but we have in Oklahoma until one year ago.

We did not start this proceeding; we do not now wish to say that if the present two rate plan be continued that we withdraw the request for investigation of the interior practices of concentration and a proper regulation of the

same. Our contention is that each one of these special services should now stand on its own merit, and be charged for if found to warrant the charge.

The production in Texas this year is about 4,000,000 bales. In the interests of the actual producer of this cotton, we should have both interior and port concentration privileges. I think, however, that the concentration privilege, whether it be the first or second or third, should be paid for so that those merchants who merchandise their cotton by some process not requiring concentration should not have to have included in their rate sufficient to cover the cost to the railroad company of performing a free concentration (R. 1502). I think that the first concentration when performed at the compress where the cotton is compressed should be charged for. I think that so-called first concentration when performed at some place other than where the cotton is compressed, should be charged more for. It is really not first concentration; in fact, it is second concentration so far as the cost to the carrier is concerned. It is true that not only the cost of the freight, but the collateral or additional cost of handling cotton, is taken into consideration by the initial purchaser of cotton from the producer in the smaller towns. The commodity must pay the toll (R. 1503). The interior compression allowance gives the interior concentrator leverage in getting his concentration and merchandising service performed for less than cost and we would like to be relieved of this [fol. 439] discrimination. The most desirable plan is that which brings most to the producer. The best results are obtained by having both interior and port concentration, but the best method should be left to natural economic laws and no Commission should palsy the arm of progress by trying to pull back the man who has found some different method which may be a little less expensive than the old method. If we are going to have progress we won't get it in that way and in the end the benefit of progress is bound to inure to the producer and consumer. We middlemen are always seeking to narrow the economic gap between the producer and consumer. That's the only justification for our existence. In buying cotton in the interior today, we either figure 83½¢ as the export rate, or we figure

80¢ plus the cost of getting it shipside, which is the same in either case. The 80¢ rate is the usual quoted rate. Any additional matter taken into consideration would relate to the actual cost or additional cost of handling cotton (R. 1504). If the rate should be 83¢ in all cases instead of 80¢ and 83½¢, it would have a tendency to make the producer get less out of his cotton than he does today under the 80¢ rate, in the case of the port concentrator who would be compelled to figure in his limits a greater cost of transportation than under the present plan (R. 1505). When cotton comes in for our firm at Houston which has been compressed to standard density in the interior, we have it sampled here. It is necessary to recondition that cotton after it was sampled to put it in good shape for transportation. In the interior, the compressing takes place after the sampling, so that an interior concentrator can order 100 bales of cotton shipped and it is then compressed, put in good condition, sample holes covered by patching, and then go on to destination. At the ports, if we are to send to our customers as good a package as our interior competitors, we are compelled also to compress that cotton here, whether it has been compressed in the interior or not. Otherwise we would send to Europe a ragged package, the packing of which has been cut on both sides, subject to damage and pilferage. Ships will take that kind of cotton, I think, but not on a clean bill of lading (R. 1506).

[fol. 440] Cross-examination:

Our firm does a very lage volume of business, and I believe on that basis we are one of the largest (R. 1507). We have in Houston some advantages in getting more of our cotton concentrated at one point, we have some slight advantage in insurance rates due to our superior construction of our werehouses, and if the concentration charge of 25¢ to the interior concentrator and 50¢ to us were the only factor, naturally we could not compete at all. The interior concentrator would not be able to bid a better price to the producer for we have some offsetting advantages (R. 1508). His allowance for the interior concentration has the effect of putting him nearer on a parity with us. We claim that is a discrimination, because he obtains that differential against us by reason of the fact that the facilities perform-

ing that service for him is overpaid by the railroad company, who in turn collected from the producer. The beneficiary of that is not the producer; he pays it back in the compress allowance of 18¢ (R. 1509). The 18 cent allowance paid to the compress company is deducted from the price all of us pay to the producer, and by reason of that 18 cents being as we claim exorbitant, the compress facility can and does give his services to the interior merchant who is our competitor at less than cost. The effect of using through bills of lading was certainly a good thing and a benefit to the producer (R. 1510). We buy a good deal of cotton all over the country. If we get an order for 1000 bales of cotton and do not have it in stock, we buy it wherever we can get it, in the Houston market, the Galveston [fol. 441] market, or in the interior. We prefer to buy our cotton in the country in small lots at the primary market. I do not believe it is of any particular advantage to us to be able to go to the places where we can buy 100 bales of concentrated cotton or 200 bales. At any rate, it would be of no advantage to us to have it in the interior as against having it at the ports. We like to perform as much of the merchandising service as we can between the producer and the consumer. We do not buy from the farmers but we do try to buy from the man who does buy from the farmer and then sell to the mill itself, not to some other middle man (R. 1511). If a man raises 20 bales of cotton, it is possible for him to go into one of these interior concentrators, sell his cotton, and get his money and stop the interest at the country stores just like the merchants. In purchasing cotton, we very often send a man to pass on the grade (R. 1512). We buy a great deal of Houston weight and grade, shipped down here and classed and weighed. We buy both ways. We do not buy cotton for any specific grade but basis middling and the grade is agreed upon between our man and the seller. We bring the cotton here and fix it up in even running grades and store it in lots of even running grades. On some of our business, we have established in the European merchants, at Barcelona, Trieste, or Havre, a grade of cotton and give it a name. We keep stock at some of those European ports (R. 1513). It has many of the same factors and elements as an ordinary merchandising transaction of a wholesale

merchant. When we buy at a Texas common point, we have it shipped to Anderson, Clayton & Co. at Houston on the domestic rate; we do not know what we are going to do with that cotton. It depends on what its real grade is. We have it switched over to the Houston compress warehouse and unloaded. It is then put through the grading process (R. 1514). Our warehouse is full of cotton that has come in on this 80¢ rate from the 1st of September until the 1st of March, sometimes it overflows and we are compelled to seek storage room in other warehouses. In that procedure, it makes no difference to us whether that cotton has been concentrated in the interior before or not; it still comes to [fol. 442] us on the 80¢ rate. The railroad is done with it when they deliver to us. They allow us 1¢ per 100 pounds for unloading it (R. 1515). I do not know when we get it. The back from the water front man gets to 100 bales of cotton to his place in the same way. He handles it practically in the same way. When he wants to get it to the ship, he drays or switches or barges it there. He does not in practice apply the inter-state rate on any export cotton in [fol. 443] the port of Houston. I do not admit that the back from the water front man has to pay 3½¢ to get the cotton from his plant to the water front (R. 1516). The distance in commerce or in industry these days is measured not so much in feet or inches or miles as it is in dollars. And my contention is, measured in dollars, that we are just about as far at the Long Reach warehouse from the ship's berths as for instance my freind, Mr. Kempner, in Galveston is (R. 1517). My contention is that, everything considered, the investments that we have over and above the investment in a plant back from water front for handling cotton in the cars, the extra investment that we have in our trolley system, and the investment of over $150,000.00 equivalent to an ordinary railroad five miles long, and the disadvantage which we suffer by reason of being compelled many times to let our cotton lie in warehouse on interest and storage because the loading berths at Long Reach wharfs are full and cannot receive the cotton, puts us where there is very little, practically very little, difference between us at the water front and the man back of the water front. I use the expression "water front", because all of the rest of us use it. I deny that there is really any water front

warehouse in Houston. At the time of the original hearing, we had started a trolley system in our plant, but it was on a much smaller scale than it is today (R. 1518). The substitution of a trolley system for hand trucking was a matter of our choice. It was not a question of convenience. It was absolutely essential that we have a trolley system on the plan that the Long Reach plan was constructed on. The whole plant and warehouses are built around the trolley system. If we undertook with that long plant and the area that it covers to truck the cotton by hand, we would not be able to take care of both the cotton and the negroes that would be necessary to handle it. The compresses back of the water front are of considerable size. If they move cotton by a switch, it is necessary for them to have the negroes and the truck to truck it from where it is in the compress to the point where they can put it in the cars (R. 1519). If they put it in by drays, it is necessary to truck it from its location in the compress to the point where they can load it in the drays. I contend that the expense [fol. 444] incurred by the man back of the water front loading into a dray or into a car, as contrasted with the expense that we have of handling our cotton, everything considered, is not nearly so great as ours. The man back of the water front can usually put his car, which usually takes at the most 100 bales of cotton, at a point directly opposite that cotton, but in spite of the impression which seems to prevail that we can slightly shift up and down our wharf until the hatch is opposite the bale, that is not possible. The size of our compress and the amount of business that we do is a factor and enters into it, but my answer to that is that a combined warehouse and wharf business with one loading berth, is economically impracticable and anyone attempting it will find that 50 to 75 (R. 1520) percent of their cotton must go to some other loading berth; otherwise they will lose more in interest and storage waiting to get in that berth than they could have saved (R. 1521). It is my considered opinion based upon the accounts and operations of the Long Reach warehouse and wharf and supported by cost figures that we have not succeeded in shrinking the 3½¢ cost of delivery materially, if at all. I don't think that we have any cotton that Anderson, Clayton & Co. purchases shipped in to us on the 83½¢ rate (R.

1522). I do not want the smaller man who can do business a little cheaper on account of his small size charged with the expensive methods of doing business required by large plants. That does not operate against the small man. You are contending that we at the so-called waterfront plant can get our cotton to shipside cheaper than the man back of the waterfront. I think it is not so much a question of size but my contention is that everything considered that is not possible. We cannot get it to shipside any cheaper than he can. Mind you I am not agreeing with the principle which I think is a false economic principle that if we could do it that we should then be charged by the railroad company more freight money on the cotton than the man back of the waterfront. We have not introduced an exhibit giving an analysis of our cost of handling by the trolley system, but what I am stating is not just my idea. I follow [fol. 445] the operations of our Long Reach Warehouse and wharfs very closely. While I do not visit it very often, I watch every individual operation. I know how much money comes in and how much goes out every month. I study the accounts. I know in a general way the method of operation and it is my considered opinion, backed up very largely by cost figures, that we have not succeeded in materially, if at all, shrinking that 3½ cents that we are all talking about. The concentration and the benefits of merchandising at the terminal points which we get cost us a good deal, but nothing from a railroad standpoint, if we export the cotton. We haven't got it to shipside when we put it in our warehouse. We do not by this method beat the export rate. When we take into account our increased investment and our increased costs due to the fact that we have built a warehouse from which we attempt to take cotton by trolley direct to the loading berth, considering our heavy investment in the trolley railway system, considering the loss of interest and storage and insurance in waiting until we get into the loading berth it is my opinion that we have not defeated the export rate and that we do not have any substantial advantage over the man back from the waterfront. When I speak of these additional warehouse charges, I do not refer to a payment from Anderson, Clayton & Co. to the Houston Compress Co.; I speak of it in the sense of the absolute cost of warehousing (R. 1524).

We have bought a warehouse called the Alabo Warehouse at New Orleans. When completed it will be in practically identically the same situation as the Houston Compress on the water front here. It started in operation last October. It seems that we will never complete it (R. 1525) (R. 1526). The Houston Compress Company may have solicited business by setting forth the facts that by using their facilities there would be a saving of 18¢, but they made a charge, I think, of 50¢ per bale for performing the service of handling the cotton. The 50¢ was addition for what they received for their high density compress. The ocean rate is 55¢ per 100 pounds less on high density than on standard. If cot-
[fol 446] ton is shipped to the Houston Compress Company by other people than Anderson, Clayton & Co. they do not undertake to do the services that were done for Anderson, Clayton for 75¢. The difference is that the cotton which comes down to be densitied is stopped in the
[fol. 447] car opposite the compress, it comes in in even running lots, is trucked to the ship, (R. 1527) is put through the machine and then trucked to the ship's berth, and that is the service that is performed for 75¢. They absorb that expense out of the compression as a matter of meeting competition of other compresses at Houston, Galveston and New Orleans. The others do that compression for 75¢ and are still confronted with getting it to shipside, just as we are. They by dray, and we by electricity on the trolley system (R. 1528). In stating my opinion that, considering the investments and other things in connection with the Long Reach plant, that there was no difference between us and the back from the water front man, I did not mean that breaking the cotton out of storage and going to shipside would cost us 18¢. The man back from the water front has a loading charge of 10¢ per bale into the car, and if he can put a hundred bales in the car he has 8¢ or a little over for switching and 4¢ for unloading; if he gets 100 bales in the car, he has topping, and I think there is an additional charge for topping. If the tariff shows 10¢, that would be 32¢ I was not contemplating movement of cotton from storage to ship's berth. I was contemplating the question of advantage or discrimination (R. 1529) as between two differently situated competitors, and I take into account that our large investment, the investment in the trolley system, as

well as the fact that we must hold our cotton on storage, many times being unable to get a bill of lading for it, when the man back of the water front only has to switch it and get his bill of lading. In the Long Reach plant, if we move a bale of cotton on the trolley around to a point in the loading berth then our warehouse should certainly receive from somebody some allowance for taking that bale off of our car, for taking the cotton down to the point designated by the ship's clerk and taking it from the car and on the other side of the berth, where the trucking distance is the same. (R. 1530). I have made no statements of what it would cost us after it was broken out of storage to move it from that point into berths 1, 2, 3 and 4, but I have pointed out that where we give an exactly analogous service and expenses, in the one case taking it off of our car at the back side of the loading berth and setting it down where the steamship agent designates, and taking it out of the car [fol. 448] right at the berth and setting it down, for that service the wharf department gets 4¢. We get that from the railroad per bale (R. 1531). If cotton were shipped to us down there for storage, the compress company has a round charge for all services. I don't know what it is, but certainly the unloading service would be included. That applies at the back from the water front plant; but it does not apply in the interior (R. 1531). I do not know whether or not the tariffs in the interior are being violated at all points on that, but I understand that the unloading is performed by the compress company in the interior as a part of the consideration of the 18¢ allowance for compression. I do not understand that merely receiving cotton means going into the car and taking it out; I do not think they could compress cotton for the railroad company without taking it out of the car, so the service of taking it out of the car is performed, as I understand it, for the railroad company. On cotton to be merely concentrated and not compressed, I do not think that the charge provided by the tariff for receiving that cotton necessarily covers taking it out of the car; the act of reception, (R. 1531-A) I think, takes place after it is put on the platform. I do not think the charge for receiving cotton in that tariff is intended to include taking it out of the car but we have some compress tariffs which perform all that service for the interior con-

centrator free of charge and in Oklahoma the charge is 15 cents per bale for the handling of every service for the interior concentrator.

I expect that 80% of the Anderson, Clayton cotton handled at Long Reach is Texas cotton, and the remainder Oklahoma cotton (R. 1532).

Assuming that 29% of the cotton handled at interior compresses is city or free cotton and that the interior railroad concentrated cotton is less than 35% of the total handled by the interior compresses, it would not necessarily follow that the purchasers of any one firm or any two or three firms would have to carry off some portion of the first concentration or second concentration cotton. Many firms will buy only cotton that is at a compress point; because of lack of capital or desire for quicker turnover; there are firms in Houston that won't buy any cotton in the interior [fol. 449] at all. The second concentration penalty would attach, as I understand it, only to such cotton as someone had filed with the railroad company previously a (R. 1533) concentration claim. All city cotton or free cotton may receive first concentration in the interior and also first railroad concentration at the ports, if it comes to the port as free cotton without a concentration claim. The interior can ship today on a local bill of lading for export to the ports and get the benefit of (R. 1534) the 80¢ rate, and they are doing it. He has no penalty under the rate today, he is using the 80 cent rate. I am not complaining about the rate today. I am complaining about the proposed one rate plan which would make it impossible for the port merchant to use a concentration privilege on this flat cotton, as we described it. Under the rates as they exist today, he gets his cotton in at 80 cents, less 1 cent for unloading plus 18 cents for getting it to shipside making it unnecessary to use the 83½ cent rate and file a claim. I am going on the assumption that the present inter-state tariff would be continued under the one-rate plan, and that we would get the penalties that now attach to the present 83½¢ inter-state rate (R. 1535). My objection to the one rate plan is not entirely based on existing tariff provisions regarding the 12¢ penalty on flat cotton and the penalty on second concentration. I would object to the one rate plan for other reasons. Those are some of the reasons for my objection, and they are in effect today in the 83½¢ rate (R. 1536).

An interior man using the 83½¢ rate would not be subjected to those difficulties because he does not encounter the flat cotton proposition at all, for if he buys cotton at a non-compress point, it is always compressed at the first press in transit, which I presume in 98% of the cases is the point of concentration also. We at the port are interested in it only because there are people over whom we have no control who ship the cotton into the Houston port in that form. We do not ship it in, in that way we incur the 12¢ penalty. As to the second concentration, my claim is that the interior has no reason whatsoever for second concentration. As it is today, they get what is in effect a second concentration [fol. 450] without any penalty. A man can buy cotton in Oklahoma, ship it, concentrate it in transit at Ada, Oklahoma, Muskogee, or Durant, and concentrate it in Dallas. I say that is not justified by transportation or for any other reason (R. 1537). If cotton is bought at Sulphur Springs and shipped to Dallas flat through the compress at Greenville, to be shipped on export bill of lading to Galveston, the 83½¢ inter-state rate would apply and the penalty for passing the compress at Greenville would attach. That is hypothetical and does not occur in practice. If the same cotton were originally concentrated at Greenville and were moved to Dallas and concentrated there and shipped to Galveston on a bill of lading marked for export, the inter-state rate would apply and the penalty for second concentration at Dallas would attach. But the interior man's method of doing business does not (R. 1539) require that he do that, and in practice he almost never does it. He is an interior concentrator and it makes little difference to him whether he makes the merchandising service at Greenville or at Dallas. If he follows that method the one rate that he can use to get shipside has a 12¢ penalty for flat cotton and for second concentration, but it does not add anything to the value of his cotton or the service he gets from it. Those things are avoided by the port merchants today, under the present adjustment, by reason of the two [fol. 451] rate plan. He works in on the 80¢ rate plus the cost of getting to the ship, plus 1¢ unloading. We want to keep the present two rate plan (R. 1540). I know some compresses in the interior are owned by cotton merchants but I do not know of any compress in the interior that is engaged in the merchandising or handling of cotton (R.

1540-A. The port merchants concentrating at the port would not receive the allowance for unloading, if the cotton moved under an inter-state tariff under which he filed a claim for concentration. The carriers would unload it when it was sent to shipside, but that is a part of the 3½¢ differential; they would not unload it when brought into his warehouse, whether at the so-called shipside or back of the water front. The carriers unload cotton coming into an interior warehouse for concentration for the 18¢ per 100 pounds. I do not think I am confusing the unloading for compression with the unloading for concentration. I will give you the name of the compress at Garland, Texas, that makes no charge whatever to the shipper for handling (R. 1541) concentrated cotton. Therefore, some one does, certainly does, unload it for them. I would not be surprised if I were told that the Garland compress did not get a bale when they offered to handle it for nothing. I doubt that the carriers will unload cotton for shippers at the warehouse at a point where it is not also compressed, but in the great majority of cases the concentration taking place at the point where it is (R. 1542) compressed (R. -543). So practically all the cotton that is handled by the interior concentrator is unloaded without any cost to him. If the cotton is going to be compressed in transit, I do not think there should be another charge specifically for unloading simply because it rests somewhat longer on the facility of the compress for the purpose of merchandising. I merely point out that the effect of the unloading allowance is this: under the one rate plan if we could bring our cotton into Houston at 83½¢ back from the water front the railroads are obligated to get it to shipside at the rate, and on top of that we must pay 1¢ per 100 pounds for unloading the cotton; we have got a total cost of 84½¢, whereas, the interior man has a cost of 83½¢.

The objection that under the one rate plan there would be a large number of small lots of cotton coming in that would have to be moved out over one railroad does not exist with reference to the interior man now using the 83½¢ rate (R. 1544). He is required under the 83½¢ rate to ship out over the same line that brought it in, but in the in- [fol. 452] terior, he shipped it out on any quantity rate, loading one bale or two, or whatever he requests on the same bill of lading. At the port he would have a cost of

5 or 6¢ per 100 pounds if he only put 10 or 15 or 20 bales in the car. The railroad company won't refund more than 3½¢ per 100 pounds for getting cotton from the warehouse to shipside. It is more expensive to move it by dray or barge at Houston (R. 1545). The 50¢ charge made by the Houston Compress Company for concentration services at the Long Reach plant includes all the merchandising services exclusive of high density service, but does not cover interest on the investment or the classing (R. 1547). It includes delivery to shipside. It includes the cost of unloading the cars to the platform R. 1549). I do not know whether there is a contract with the farm bureau whereby the $1.15 will be reduced 18¢ per bale in the event the one rate plan goes into effect. I do not desire to have the export demurrage tariff cancelled, though its cancellation might work somewhat to our advantage competitively (R. 1555). I believe it is a fact that all of the wharves and facilities at port ordinarily provide 15 days free time for the through bill of lading cotton. That would cover cotton coming from the interior to the port in these cars that would not have so much demurrage. It is not so much a question of getting the cotton on board the vessel as it is in getting the cotton into the loading berths; they are sometimes crowded; (R. 1556) it is also a question of congestion in the railroad yards. I would not add the 3½¢ to the local rate, or even ⅓ of it, simply because the shipper has the right to so many days free time under the through bill of lading, but I simply say it is a factor in the making of rates on the through bill of lading (R. 1557).

With reference to my testimony regarding the different methods of handling cotton in the interior and at the ports, I have not had actual experience in the interior in the sense that I have been a compress superintendent (R. 1558), but I have observed compress operation in the interior for many years and have been a stockholder in interior compresses since 1905. My testimony about compressing cotton in the interior is based partly upon my experience with my facilities at the port and partly on my general knowledge of conditions in the interior, through stock ownership and intimate association with interior compress businesses for a number of years. I have not had any actual experi- [fol. 453] ence with the physical operation of an interior compress. I think that the Long Reach plant has handled

about 600,000 bales per annum and the Fifth Ward plant about 225,000 (R. 1559). That includes round bales, counted two for one. We have three high density compresses in Long Reach and two at the Fifth Ward plant, all five of them do not operate continuously the year around (R. 1560). Experienced men operate compresses more efficiently and economically than inexperienced men. I know that in the interior some of the compresses close down the biggest part of the year and discharge practically all of their men and reemploy men again the next year. That would have a tendency to slow down the interior compresses only in a slight degree, because generally at the first of the season they have taken on their old crew and carry them through continuously until the active season is finished. It would not always be possible for them to pick up the old crew (R. 1561). The interior compress suffers very badly from a drought in its territory, (R. 1563), whereas the ports will have other territory to draw from and is not dependent upon one county or several counties (R. 1564). Most of the cotton we compress has already been reduced to standard density. With a daily flow up to capacity day after day, a compress can certainly operate somewhat cheaper than if it is interrupted (R. 1566). The switching service at our plant is satisfactory. If we had to wait for a local freight train due tomorrow to do the switching at our plant, that would effect the cost of operating our plant if we did not have cotton to handle. A 100 bale shipment would probably arrive in Houston in two cars at the same time (R. 1568). If transit cotton arrives at the interior compress in different cars at different times, it might slow up the compressing of the cotton. They might have to put the cotton out on the platform a bit until the other cotton came in and compress it all at once. We are not troubled with those conditions at the port but we have lots of others we are troubled with. We get a good deal of cotton at the port, previously compressed, that is wet and damaged (R. 1569). Neither the interior presses nor the port compresses are supposed to compress cotton in a wet condition. Generally the conditions which obtain in the operation of an interior compress are comparable with the conditions that obtain in the operation of a port compress. Our expenses of operation at the port, I think, in the way of [fol. 454] wages and overhead and investments, and per-

haps trackage, is certainly greater than in the interior. I do not mean per bale, but I mean in the aggregate. The interior compress almost always has a wooden platform, and they have various methods of covering. Usually it is (R. 1570) corrugated iron I believe. We include insurance in our overhead. Insurance would be greater in that kind of a plant than you ordinarily find at the port, but the insurance would be no greater if they built in the interior the same kind of construction that we have at the port. Of course our interest on our investments is much greater with a concrete plant, than the interest on the investments in the interior is. I think interest on investment is as much a charge on industries as wages or anything else. I think that a man has not made any money until he first charges 7% for interest, since he can get that much on first mortgages (R. 1571). In overhead costs, I include fixed salaries, taxes, insurance, interest on investments.

The farm bureau cotton is handled at the Fifth Ward plant to the capacity of the plant. They have put some in Long Reach and some in another plant rented elsewhere. In 1904 there was no storage of any consequence in the interior in Texas or Oklahoma. There has been material and substantial increase in these facilities since that time (R. 1572). There is agitation after every wet season for the compresses to improve their storage facilities because of damage to bales on open platforms, and year by year the compresses improve their physical facilities and shedded their platforms (R. 1573). The market for the round bale cotton is not substantially different from that for the square bale that we ship to Japan and China, Germany and France, Portugal, Spain, Italy, Russia, Poland, Czecho-Slovakia, and Austria. We sell practically none of it to domestic mills. We do a very small business in square bales from Texas and Oklahoma to domestic mills. The reason is that after merchandising our cotton at the ports we must compress it, and as the railroad rate for high density is the same as for standard, must stand the cost of the additional compression on shipments to domestic mills. The ocean [fol. 455] rate allowance for high density compensates us for this on shipments to foreign destinations. Port concentrators are almost out of the domestic business. There is a prejudice against high density cotton on the part of American mills; the same prejudice existed at foreign mills

before the war, but they were compelled to take it during the war on account of the high ocean freight rates. They learned that the high density bale was as a matter of fact a much better sale than the standard compress bale, being more compressed, better covered and less subject to damage and pilferage. If we had the allowance in the freight rate on shipments to domestic mills, we could overcome their prejudices against the high density bale (R. 1576). The southeastern mills are the largest consumers of cotton in this country; the New England sales are still very great consumers. If a charge should be made for first concentration against the cotton that the Oklahoma cotton growers ship to the domestic mills, which charge they could avoid by shipping cotton for export, I do not think that would penalize their handling of that cotton materially, if the same advantage applied to all other similar purchasers. They are merchants in that sense (R. 1577). Since we export the greater portion of our cotton, we would not claim a concentration, especially if there was a penalty attached to it. I do not think that we would have any improper advantage if a penalty should be assessed for first concentration. I think that the cotton business was conducted in a fairly satisfactory manner under the one rate plan before 1917 in Texas and before 1923 in Oklahoma, Arkansas and Louisiana, but since that time we have had (R. 1578) large markets built up at the ports and port merchants established and conditions have changed very materially in the merchandising of cotton.

One of the principal reasons we are building the plant at New Orleans just back of the dock is in order that we may avail ourselves of the service of the Mississippi Warrior Barge Line to bring cotton in by barge which we can do [fol. 456] at the regular tariff at about 50¢ per bale less than the railroad rate and put it in the warehouse at much less expense than if we had to switch (R. 1587), it to our Shrewsbury plant at New Orleans. Our Shrewsbury plant is unfortunately located in respect to switching service in that we have to use a two line service and pay a very heavy switching toll so that our average cost of delivery to steamer in New Orleans is about 25¢ per bale so that we are at a great disadvantage there than one would be here. For that reason, and the reason that we wish to handle barge cotton, we are building this plant (R. 1589). I do not think

that any expense or operation of a merchant or comparison of one merchant with another should really be taken into consideration in the matter of railroad rates or any concentration arrangement or anything else but the one rate plan seeks to equalize the back of the waterfront man with the waterfront man, and I have attempted to show that instead of equalizing it, it unequalizes it with the interior man principally. Between the waterfront and the back from the waterfront, the result will be to penalize the waterfront man if your position is he must not receive anything for the cost of putting his cotton to shipside, it penalizes him heavily for his location, and in the case of our Long Reach plant if that position were maintained and stood up it would clip about 50 cents off of every dollar of our investment in Long Reach.

The railroad company has no right to bring 100 bales in and deliver it to me at Long Reach at 83½¢ and bring 100 bales to Mr. Kempner and give him back 3½¢ of it when they collect 83½¢ from me for the same service.

If the facts were proven to be that the railroads perform a greater service in delivery to our plant than in delivery to Mr. Kempner's plant or any back from the waterfront plant at Galveston, I say that they should charge us more for what they do for us. I contend that the rate should be based on the service rendered and not on an equalization (R. 1594). We handle more round bale cotton than anyone else does, although it is a small part of our business (R. 1595). We own the patent on the round bale [fol. 457] that we call the "Clayton Bale." The operators can sell the round bale cotton to others if they wish. The difference in the ocean rates between high density cotton and standard cotton is the question of competition among steamships. I think they would have the power to get together and put it at one rate (R. 1597). The Houston Compress Company is doing business for other shippers, but I never inquire into the affairs of other shippers. The officials of the compress companies understand that the business of other shippers is not to be divulged to us, because they are our competitors. We do not restrict the operators of the compresses in the sale of their cotton. We do charge them a royalty for the operation of the round bale press. We also allow them a premium for cotton marketed to us so that when the volume gets up to a certain

stage, the royalty is eliminated. The round bale press man gets his compensation for the payments of the royalty to us almost altogether from his collection of the press allowance in the interior of 18¢ per 100 pounds. He pays us a royalty of 20¢ and collects 18¢ back from the railroad company, but when he gets up to 2,000 round bales, we release him from any further royalties so that he continues to collect the 18¢ per 100 pounds from the railroad but pays us nothing (R. 1599). Many of the presses have as much as 10,000 round bales in one season and collect that compress allowance from the railroad company. Anderson, Claytor & Co. buy the round bales from these operators of the press (R. 1600). Middlemen ought to be permitted to work out the most economical progressive way of merchandising this commercial commodity without railroad rates being adjusted in such a way as to force it into some certain channel.

It is of benefit to the farmers to have available to him without penalty the large markets of Galveston and Houston and New Orleans, as well as the first compress point if those markets are economically situated and can serve the farmer to advantage. If they must exist by reason of some special privilege or favor from the railroad, they should not exist. We do not use concentration at Galveston [fol. 458] or Houston to any considerable extent. All of our stored cotton is not concentrated (R. 1607). The free concentration allowed to the interior merchants could not be the same as the free concentration accorded the back from the waterfront merchants, for the reason that in the case of the interior merchants, the concentration takes place at the same point where the cotton is compressed, and that cannot be true at the ports. Cotton concentrated at the ports, which has been compressed en route by the carrier and for the carrier's convenience, should receive a heavier penalty than cotton concentrated in the interior, because it is a greater service. I do not think that would react against the Houston market materially. Other merchants might disagree with me (R. 1608).

If the one way plan is established there will be more use of the concentration privilege at the port but less cotton

to use it with. It will change conditions materially. It would be necessary to make quite a number of estimates in working out what the rates should be under that plan.

In the beginning of the construction of the Houston Compress Company's Long Reach plant we had no wharf, and we did use within the warehouse proper a space of about 40 feet wide for the full length of the warehouse in which to deliver cotton to the steamship agents, and they did come to this portion of the warehouse and get the cotton and truck it to the ships. We built a wharf in the spring of 1924 and since that time the cotton has been delivered to the steamship agents in the wharf house. The Houston Compress Company operates a dual facility. They are warehousemen and they have a wharf. The business is a large one and it must be conducted along very definite, specific lines. They cannot store cotton in the wharfhouse because certainly for the active part of the season, for at least six months, the wharfhouse is occupied with steamship cotton, and likewise, they cannot deliver cotton to the steamship agents in the warehouse, because the warehouse is full of storage cotton, and the steamship agents would not take it there if they could deliver it to them unless the compress company would abandon to the steamship agents that part of the warehouse, which they could not do and con-
[fol. 459] tinue to operate a warehouse business (R. 1617). Anderson, Clayton & Co. has at the present time a considerable stock of cotton in the Long Reach plant of the Houston Compress Company, and the stock clerk told me yesterday that there are 368 separate and distinct qualities contained in the stock of square bales and some 150 separate qualities in the stock of round bales. It would be impossible in the operation of a large business at this time to attempt to berth the steamer with respect to the storage of this cotton, or to store the cotton with respect to the berthing of the steamer, and this is not done.

Many concentrators at Houston get their cotton delivered to shipside for 12¢ per bale, by having it barged at a cost of 17¢, from which must be deducted the saving of 5¢ wharfage. In other cases the cost of switching is a little over 8¢ per bale, 4¢ for unloading, making 12¢, but in those cases the shipper may have to pay as much as $2.00 per car extra for the topping of cotton in the car; in other

cases, if only 50 bales are loaded in the car, the cost is over 20¢ per bale (R. 1618). There is an insurance regulation which would penalize or prohibit the storing of cotton on [fol. 460] open wharves. The officers of the Houston Compress Company are instructed that there must be no preference given to the handling of our cotton.

Cotton which is stopped at Greenville may receive concentration service by a number of merchants while there; it may change hands two or three times while enjoying the transit privilege at Greenville. It may be placed on range and examined while there and resampled (R. 1690). Where it is not compressed at the interior points but only receives the concentration service, it is necessary for it to be unloaded from the cars, placed in the sheds, and then placed out of the sheds again into the cars and loaded into the cars again for the owner of the cotton as a part of the concentration service. That is done at the expense of the owner of the cotton. If it is compressed in transit and the same privilege availed of, the merchandising service is included in the allowance made by the railroad to the compress company for compression.

Prior to 1924, the longshoremen did go into the 40 foot space in our warehouse back of what is now designated by the deadline, and to that extent we have a changed condition since 1924. That change was made by the Houston Compress Company for reasons of its own (R. 1621). We can change the designation of the ship's berth by negotiations and agreement with the steamship agent. If we designate part of the warehouse as the ship's berth, we have to abandon that part; the 200 foot requirement is that the trucking shall not be over 200 feet. There is lateral trucking both initially and terminally, so that if you get a point 90 feet away from the ship's tackle, it is not possible to say that you have only a 90 foot truck (R. 1622). Our contract with the ship is to deliver the cargo at its berth; it is immaterial to us whether the chief officer of that vessel wants to put the cotton in hold number 1 or hold number 4. That is his [fol. 461] business (R. 1623). I do not understand that we are within our rights so long as we put the cotton within 200 feet of the side of the ship whether it be the bow or the stern. I take it that the steamship Agent would not consent if we tried to fix a loading berth the back end of

which from the water line was so far from a ship, say 200 feet, that considerable cotton in trucking it laterally to an aisle way and then in order to get it to the ship, trucking it to hatch, would have to be trucked 250 or 300 feet. In that case he would have to pay an extra charge to the longshoremen. I take it that it is the duty of the shipping clerk of the Steamship Company to know to what destination the cotton is going, and the hold of the ship it should be put in. He designates the part of the berth where it is to be put, I understand. I have no positive knowledge (R. 1625).

WITNESS H. A. AHLERS

I am employed by Alexander Sprunt & Sons in the handling of their shipping department. They handle cotton and have a compress at Houston (R. 1631). Alexander Sprunt & Son are the owners of the Ship Channel Compress Company. Exhibit A-63 is a picture that shows both the compress plant and the wharf facilities. In the picture, a line of box cars separates the wharf facilities from the warehouse (R. 1632). There are two spur tracks which separate the wharf from the warehouse. The wharfhouse, or steamship cargo berths, is shown next to the water. Across the railroad track from that is our compress. The compress building which is shown to the right of the picture is approximately 820 feet long and 460 feet wide. The wharf house is approximately 600 feet long and 180 feet wide. 180 feet is the approximate width. The north end is slightly narrower than the south end (R. 1633). There are two berths for ships. Steamship Agents take the cotton delivered to them in the wharf house adjoining the wharf. That is the part between the railroad cars and the steamship that is shown in Exhibit A-63. They do not take [fol. 462] cotton inside our compress or warehouse across the track from our plant. The Ship Channel Compress Company has a lease on the building called the Gin Point Wharf. Ships take cotton directly from that place, which is used for the delivery of cotton, which is received from the Magnolia Compress Company on the wharf. That building is almost at the top of the picture (R. 1634), directly in the center. It

is the building in the picture which fronts on the water's edge at the extreme end of the wharf house. The greater amount of the cotton which Alexander Sprunt & Son exports, goes out over this facility. We do not barge any substantial amount of cotton. The Steamship Agents do not accept our cotton any point other than the part which we have designated on the wharf house, together with this import warehouse. We do not permit them to come inside our warehouse to take cotton for their steamers (R. 1635). The engagement notes which we make with the steamers includes the words "To be delivered alongside the Vessel, or at her loading berth."

Cross-examination:

Our firm does not store cotton in the wharf house (R. 1636). Cotton is delivered from the place designated as the compress warehouse to the wharf house by hand truck. We have a runway over these railroad tracks. The Ship Channel Compress Company assesses a dockage as well as a shed hire against the vessel. We also assess a wharfage charge against the cotton of 2¢ per 100 lbs. (R. 1637). We handle cotton that is switched down to this plant for placement on board the ship. I am reasonably sure that my firm does not store cotton in this wharf house. The last time I was down there was approximately four months ago (R. 1638). Last cotton season, we handled approximately 500,000 bales over our wharf facilities (R. 1639). We do not have the same amount of wharf space as Anderson Clayton & Company (R. 1640). I do not know the length of their wharf. We do not store cotton at the uncovered portion of the wharf; the ships do not accept it from there. The wharf house is in fact a wharf and only a wharf (R. 1641). All of the building next to the ship, as shown on Exhibit A-63, is included in the wharf house, [fol. 463] from one end to the other. The water side part of the building, shown on Exhibit A-63, is 600 feet long by 180 feet wide. The Ship Channel Compress Co., needs that wharf facility to handle 500,000 bales per annum; we use it also for receiving inbound cargo from ships. It is quite customary to store cotton on the second floor of the warehouse shown on Exhibit A-63, next to the ship (R. 1642). We never store cotton in the first floor. The only

change I know of that has taken place is that in the previous hearings, this water front facility was not completed. Today it is completed (R. 1643). At the time of the previous hearing, we had no wharfs. We could not handle ships at these facilities. Cotton coming in on a domestic bill of lading is principally unloaded on the track to the right of the warehouse. Cotton stored in the upper part of the wharf house is occasionally unloaded on one of the tracks that is to the left of the warehouse. There are two double tracks between the warehouse and the (R. 1644) wharf. The cotton from upstairs we chute down by skids. It is not possible to chute it down by the apron as there are no skids on the aprons. We cannot chute it down to the steamship agent within the warehouse proper, because the skids are on the platform, on the outside which is opposite what we call track #3, which is an exclusive steamship track. The skids are located on the platform just adjoining that track, and the steamship agents will not accept cotton on that platform. After it is skidded down, we would have to truck it sometimes 100 feet to the steamship agents; sometimes 500 feet. The second floor of the wharf house is about 180 feet wide, and about 200 feet long. The top part of the picture in the exhibit is the south end. The Ship Channel Compress Company is a public facility; the 500,000 bales handled from our wharf facility during the last cotton season, Alexander Sprunt & Son only handled about one-fifth, the other 400,000 bales represent cotton from other shippers and from other compresses (R. 1646).

Mr. Fulbright: The total number of bales, counting two round bales as one square bale, handled over the wharf of [fol. 464] the Long Reach plant last year, was 800,401, of which Anderson, Clayton & Company's cotton was 399,881.

WITNESS F. R. DALZELL

Cross-examination:

I do not speak for any of the back from the waterfront interests at the port of Galveston (R. 1648). I represent only the Houston Cotton Exchange. I do not think that Mr. Griffin's Company has used the port of Houston as a

port of exportation to any great extent (R. 1649). I received my instructions from the Board of Directors, and that is all I know except that I attended a general membership meeting at which the question was put as to what the position of the Exchange should be in this matter, and there was no negative on the question of taking the course that we did take, and Mr. Griffin's Company was represented at that meeting (R. 1650). The total rail movement out of Houston for the season of 1924-1925 was approximately 300,000 bales. It is not segregated as between back from the waterfront and waterfront men. The total movement out of Houston in every way, and in every direction was 200,000 (R. 1651). The total concentration at the port of Houston was some two and one-half million bales (R. 1622). My statement that 40% of that was second concentration cotton, was based upon information from different receivers of cotton. If the one rate plan goes in, we favor a charge for the first concentration, and that would apply to 100% of the back from the waterfront man's cotton, if he concentrates all his cotton. There would be no concentration by the waterfront facility on export cotton, that is, no concentration from the railroads' viewpoint. It would be no more railroad concentration than the wagon cotton assembled at an interior concentration point (R. 1664). In the application of the local rate to the shipside facility on cotton going for export, the shipside's facility could avoid the charge for concentration (R. 1665). The man back from the waterfront could avoid it on all of his cotton that he put on shipboard at Houston. He could do it by [fol. 465] abandoning concentration refunds that he would have coming to him from the railroad. He could not use the export rate. He would pay the cost of delivering from his back of the water front to shipside (R. 1666). That would be approximately the same as the charge for concentration. He could escape the 3½¢ on all his cotton. I do not know of any change in conditions since the Commission made the finding that the record as to the difference between the cost of handling through bill of lading traffic and the local traffic was not sufficient to justify the difference in the two rates (R. 1667). The changes necessary in the present tariff, in order to operate under a one rate plan are: penalty for passing a compress, penalty for sec-

ond concentration, restricted routings from certain territory, the inability to collect refunds because of the necessity for sending cotton from back of the water front in cars, and the inability to match the inbound movement against the outbound. These conditions exist to-day under the inter-state tariff, 83½¢ shipside rate. The concentration of cotton at Abilene, originating on the Wichita Valley, and shipped on a through bill of lading, to a foreign destination, would be subject to the penalty for restricted routing under the 83½¢ rate today; of course he would come in under that routing, but in the nature of his business, there would be no occasion for him to suffer any loss from it (R. 1668). The port concentrator can ship that traffic from the Wichita Valley and avoid that restriction as to routing, because of the two rate plan. The penalty for passing a compress, and the penalty for second concentration, and the matching of freight bills are now in the interstate tariff, and therefore they do affect the man who is using inter-state tariff. A rule that may be entirely proper and reasonable in the interior, because of conditions there, is not necessarily reasonable and proper somewhere else, because of changed conditions. For instance, I cannot conceive of a single reason why an interior concentrator should want to pass a compress. My exhibits have shown that for us to be governed by those same rules is unreasonable (R. 1669). The purpose of the rule as to the matching of inbound and [fol. 466] outbound billing, is to protect the revenues of the carriers (R. 1670). Mr. Reed: (interrupting). The reasonableness of the rate is not involved here. When the M. K. & T., for instance, brings cotton into Dallas that originated at local points on its lines, 15, 25 or 30 miles from Dallas, the revenue earning service has just commenced. It would not be reasonable to give that cotton a concentration privilege under a through rate, and then give the traffic to the Southern Pacific for the revenue earning haul from Dallas to Galveston. With us, conditions are different because the revenue earning service has been performed, and there is nothing left except the switching charge, which is not remunerative. I do not know that the carriers will give us the reciprocal switching charge. On the contrary they will not do it (R. 1671). I have asked for it, I would say, roughly, 30 times within the last year.

I do not know that any of them have said definitely that they would not do it, but they do not do it (R. 1672). The Houston Cotton Exchange, and Board of Trade Department's Advice Letter #131, seems to be mine. In the statement "Your analysis of the Commission's decision under the one rate plan, first the effect on the water front compresses, they lose an (R. 1672) advantage equal to the present domestic rate and the shipside rate minus their actual expense (Plant cost) of delivering cotton from compress to shipside"; by advantage I meant whatever the advantage amounts to over any one shipping under the shipside rate, anyone shipping at the water front plant, anyone who is competing anywhere else (R. 1673). In a brief before the Interstate Commerce Commission in 4th Section Application 464, signed by us and the Houston Cotton Exchange and Board of Trade, the statement is made that the total difference in favor of the port in the cost of concentrating cotton in Oklahoma vs. the Ports is $1.00 per bale for a series of three years and less at the port than in Oklahoma (R. 1674). That brief was written by Mr. Edwards of the Oklahoma Farm Bureau, who had asked me in advance of issuing it whether we would join with him in the expense of getting it out. I told him that we would participate in the [fol. 467] cost of it, and he prepared the brief in Oklahoma City and put my name on it and sent it to Washington, and I never saw it for perhaps a week afterwards.

[fol. 468] I am not responsible for those statements, although the brief bears my name and we paid 50% of the cost of it. I did not write the Commission when I received the brief and correct those statements. I oppose the cancelling of the rates from Oklahoma to the southeast via Houston, on the ground that the Santa Fe & Katy by Houston was the natural route (R. 1675). I would not regard that as out of route service. It may not be as short as some routes, but it is the natural route of the two main Oklahoma lines. I differentiate between the natural route and the short route. I asked the Commission to permit the Santa Fe & Katy to continue to do what they themselves decided they wanted to do (R. 1676). I do not ask and have not asked that the export demurrage tariff be cancelled. When cotton moves into a compress point, to be compressed by the railroad, and is later concentrated and ultimately

moved to the port, there is one switch movement into the compress point and one out. There would not be any additional switch movement because of the concentration feature. But in the one case, the service is to be performed by the railroad for itself, and in the other case it is the service being performed for the benefit of the shipper. I do not know of any change in regard to demurrage and the average detention of cars in Galveston since the Commission's decision. I don't know anything about conditions in Galveston. The fact that the ten days demurrage is not being used every day or every season, I don't think that is important. It was fixed by the Commission because conditions showed the Commission it was necessary (R. 1681). In regard to the lower rate on cotton mill cotton, on which I stated that the concentration privilege does not apply, if the cotton came from a point in the interior to Houston and was warehoused there, and if a man were to sell it to the mill, and try to get a reduction down to the 67¢ rate, he would have to file a claim for it, but I think the bulk of it is billed directly to the mill at the 67¢ rate. The special Cotton Mill rate averages 13¢ less than the other. It is restricted to cotton that is billed to a cotton mill point (R. 1682). There is a special provision in it that it will not contain in itself transit privileges. If the [fol. 469] carrier compressed for his own benefit, the 67¢ rate would apply (R. 1683). I do not think that Glenn's Port Tariff #19-A contains a note which says that the domestic rate will not apply to facilities that can have ship-side delivery (R. 1685). I do not know of any interior shipper that is receiving from the railroad any part of the [fol. 470] compress allowance (R. 1686). At the time the compress allowance was increased from 10¢ to 15¢, I do not know of any additional service that was added except the provision that it would require a 75 bale minimum loading. I do not agree that the 10¢ allowance did not include the performance of the service of unloading and reloading by the compress. I do not believe that I have ever testified before the Texas Commission, or any other Commission that it did not include the unloading and loading of cotton (R. 1687).

By Mr. A. L. Reed:

Q. Well, in your opinion wouldn't the addition of loading and unloading add material cost to the handling of the cotton?

A. It would add that amount of course.

Q. Would it be a material cost adding substantially to the cost of operation?

A. Well of course material, it would add just what it would add. I do not know what the cost is.

My testimony in Docket 12,409 had nothing to do with the cost of loading and unloading at compresses. It related to the cost of loading (R. 1688) that the railroads have to bear at country stations. The testimony says that it would add 8¢ to 10¢ per bale, but it has no relation whatever to the pressors' cost of loading; it applies to loading at the country stations where it is first taken up by the carrier, where they have 50 bales of cotton to load, and where they have to go out and hire somebody to put it in cars for them (R. 1689). I testified in I. C. C. Docket 14,385, that the carriers receive a profit from compression through the saving of car space, and therefore, getting lower transportation costs. I never did believe that they [fols. 471 & 471-a] got as much profit as they paid out in money, and I don't believe it now (R. 1690). I could not accept the one rate plan willingly without relief from all of the handicaps so that the one rate plan would be a one rate plan in fact, in practice, not alone in theory. I would accept the two rate plan if all shipside rates would apply to all shipside warehouses, including Long Reach plant, Alexander Sprunt & Son plant, and the Weatherford Crump & Company's shipside plant, leaving the back from the water front location as it is. I am representing the back from the water front plant, and I do not see how I could possibly object to that. I would accept it (R. 1692). If we had a second free concentration, we would use more concentration. We would not use it any more than we do, but if we do not get it, we simply can not re-collect our concentration refund (R. 1701).

[fol. 472] WITNESS S. W. JAMES

I am connected with the Cotton Concentration Company at Galveston, concentrators and compressors of cotton; they are not cotton shippers. They do not buy or sell cotton. I am General Superintendent, and have supervision of the delivery of cotton from the warehouses and compresses to Steamships, as well as to the cars and to the compress. I have been with the company 10 years (R. 1712). Prior to that time, I had seven years experience in the cotton business at Houston and Galveston. I have made a personal inspection of the warehouses and compresses owned and operated by Alexander Sprunt & Son on the Houston Ship Channel at Houston, Texas. That was about two weeks ago (R. 1713). On that occasion I saw cotton stored in the wharf house shown on Exhibit A-63, tiered two high. I knew it was stored cotton, because in my experience in the compress and warehouse business, I have never seen cotton on the water front for export tiered or piled. On the other hand, from what I have seen of Alexander Sprunt & Son's export business, I do not believe that they export standard density, no patch cotton. This was all standard density cotton that I saw, with possibly some uncompressed cotton (R. 1714). I have made a study of hand trucking cotton from storage to cars, and to motor trucks within the warehouses operated by the Cotton Concentration Company at Galveston, and my Exhibit A-64 represents the results of that study (R. 1715). The cost does not include any cost of picking the cotton out by numbers from storage; it includes only the cost of taking the cotton after it has been picked up, laid out, and arranged to be hand trucked to either the railroad cars or the drays. It represents strictly plant service, and the real out of pocket labor cost, including no overhead expense at all (R. 1716).

Cross-examination:

I walked through the facilities of the Ship Channel Compress Company with one of the boys that worked at the plant. I did not have the permission of the Compress Superintendent. I will not give the name of the man who [fol. 473] asked me if I wanted to look over the wharf. I

would judge that a third of the space on the ground floor of the wharf house, was taken up by storage cotton. I would estimate the number of bales there that were not for exportation or delivery to a steamship as 3,000 bales. I am sure from my experience around and about Alexander Sprunt & Son that they will never put any cotton into the warehouse, that is, the wharfhouse on the second floor in tiered form other than storage cotton. In fact that was the practice year before last as well as this year (R. 1717). I did not examine the documents of the Dock Superintendent of the Ship Channel Compress Company to ascertain whether or not that cotton was for a vessel or steamship. I never did work for Alexander Sprunt & Son or for the Ship Channel Compress Company. In all my experience, I never did see cotton put into a ship's berth two high. I never did see the Compress Company tier cotton down there. I have not had any experience as a wharf agent for Steamship Agents or compress companies (R. 1718). I went all through the wharf house on that day. I went through the compress. I went through the compress across the track from the wharf house. I do not know how many bales of cotton there were in the compress on that day. I did not examine any documents to determine whether that cotton had been booked for a Steamship or not (R. 1719).

The maximum cost shown on the Exhibit is that where we would take the maximum haul, we would make in reaching a car or a truck. Some of the warehouses are as long as 1,300 and 1,350 feet. The warehouses range from 10th street in Galveston to 37th street. They are on the land of the Galveston Wharf Company. It does not own the warehouses. I do not know who does. One of the warehouses is adjacent to the steamship docks (R. 1720). It [fol. 474] is about 50 feet from the docks, I should judge. The others are in the neighborhood of 1,300 feet. The one that is 50 feet from the dock, I mean it is 50 feet from the wharf shed. The wharf shed is the berth for that particular steamship agent, where the Steamers receive the cotton. There is a railroad track between that particular wharf, and the wharves. It is not possible to bridge over that track, and hand truck the cotton. It is not possible to handtruck the cotton from various of our warehouses

to Steamship berths (R. 1721). I do not know what change has taken place since 1923. We get it to the Steamer's [fol. 475] berth by dray. We would have to dray it that 50 feet. I do not know whether or not the same interests that control the warehouse company, also own and control a controlling interest in the Cotton Concentration Company. My Company owns 6 high density compresses (R. 1722). They are on the piers between 10th street and 37th. Some of them are on premises adjacent to piers; none of them are on the pier. They are 50 feet from the piers. Cotton is handled from the high density press to the piers by dray, in all cases. It is impractical to handle it by hand truck. I do not know whether or not in 1923 it was being handled by hand truck (R. 1723).

WITNESS O. J. BROWN

I am Division Superintendent of the I. & G. N. Railroad, and have held that position five years, located at Houston (R. 1724). Exhibit A-33, showing the Houston Compress Company facility and the tracks on it, is not a correct showing as to the tracks as they are today. There is one additional track there. Track #3 is nearer track #2 than the blue print shows; they are separated by an Island platform. Since the first of January of this year, through traffic, or export traffic, has been handled on track #3, which we call the Steamship track (R. 1725). Track #3 today and track #2 are separated by the island platform, and it is a fact that since the first of January we have shipped cotton on track #3 near that island platform. There is no warehouse between track 2 and 3, as shown on this blue print. There is no island platform. There is a wharf between track 3 and 4. Track 3 is not shown on this blue print. In the physical handling of cotton within the terminals at Houston, within the switching limits in Houston, there is no difference in the cost to the carrier of handling through bill of lading, or ships' cotton to that facility shown on Exhibit A-33 than the cost to the carrier for handling local delivery cotton to that facility (R. 1726). Track #4 is south of track #3. Track #3 is nearer to track #2 than is shown on this print. This print shows

a distance of 68 feet between tracks 2 and 3 at this time. There is an island platform between track 2 and 3 which, [fol. 476] in my judgment, is about 10 or 12 feet wide. There is a 68 foot warehouse back of the main track, and has been at the Houston Compress Company for some time. Back of that 68 foot warehouse, away from the water front, there have been two tracks since the compress was built and three since 1923. That is on the far side of the water from the 68 foot warehouse (R. 1726-A). The track numbered on this blue print as #3, is, in fact, the track that has been in existence since the warehouse was completed. It has been moved and shifted from the location as shown in this blue print, it has been shifted nearer to track #2. The 68 foot platform with a shed on it was cut down and a new warehouse constructed between tracks 3 and 4, and track 4 was constructed at the same time (R. 1727). The 68 foot warehouse has been built since this photograph shown in Exhibit A-62 was made. The warehouse is still there. There is a 12 foot platform between the two tracks, and the main warehouse, on each side of which there was a track. Changes are taking place down there. I was on the platform the 23rd day of this month, and noticed that tracks 2 and 3 were broken in the center (R. 1730). Track #3 came to this warehouse, it had a 12 foot platform that adjoined it. There has been ships' cotton placed on there from time to time, as ordered by the compress. I do not know the extent to which that has been done. The cotton was placed there to ship, not to be high densitied or anything else done with it. I could not say whether that cotton was placed there because the wharf track was then being used or occupied by other cars. We place no cars for the Houston Compress Company except on their written order (R. 1731).

Witness J. M. Smith

I am Superintendent of the Merchants & Planters Compress and Warehouse Company at Galveston, Texas. I have been with that Company since it was organized in 1898. I am personally familiar with and have supervision of, the handling and hand trucking, or otherwise delivering of cotton to points of storage in that warehouse, to motor cars

and trucks and drays. I have made a study to show the [fol. 477] approximate cost of hand trucking cotton within that warehouse for delivery to railroad cars and to drays. It was made under my direct supervision (R. 1732). It is shown in my Exhibit A-65; the cost figures represent actual out of pocket labor cost only. No other overhead or incidental expense has been included. Our warehouse is approximately 900 feet long and about 700 feet wide. It is the warehouse of the Merchants Compress & Warehouse Company; the firm of H. Kempner owns it. I have not included in this cost study any item of expense of breaking out of storage or breaking out of lots, as it is known in the cotton trade (R. 1733). The approximate cost of breaking the cotton out of lots, would depend on the character of the cotton and how much was stored. If it was concentration cotton and came in by numbers, it would have to be four-hooked out of its position and the chances are that that cotton would run about 10¢ per bale to break it out. To four-hook cottn, means to get on top of a bale with six men, pull the cotton out of a block, and set it out in the runway so that it can be assembled with the other. That is when it is in single tiers. On tiered cotton the expense would be greater; if it is piled about 7 or 8 high, and we have to break it out in small lots, it costs us, our figures show, from 18¢ to 22¢ per bale. We consider the trucking service, as represented by Exhibit A-65, as a plant service (R. 1734). The heading of page 2, Exhibit A-65, should read from Storage to Cars, instead of From Storage to be Loaded on Drays or Motor Trucks. That is the loading into cars.

Cross-examination:

Breaking cotton out of storage is sometimes a very expensive proposition to a warehouse. Where cotton has not been tiered, and the owner of that cotton has sold certain cotton, and it is ordered out by number, he will give us a list of numbers, and we get into our location record (R. 1735); the position and location of each bale alongside of the press number that is listed on that order. We have to make a search to locate the various bales, and that costs money. We pay the six men 40¢ per hour. The working [fol. 478] gangs have a foreman with a chain gang, and

some of the members of the chain gang go into the pile of cotton and pull the cotton out, and others come along and pick it out of the runways and truck it to the position designated by the yard foreman, or the shipping clerk, so that they can assemble it into even running grades and staples. Sometimes the chain gangs run to 24 men (R. 1736). Getting cotton out of the blocking position costs about 10¢. Getting it into the compress would cost us more, because the additional trucking charges would be added to that breaking out. We do not have a loading place for drays all along one side of the plant. Our press room just about equally divides the main plant, and we have an 18 foot space on the west side of the compress proper, and drays come in on one side of the press and go out on the other side, and the cotton we load out of the plant is usually cotton that comes from the jaws of the press, and that is where we do our loading. We usually press on the outgoing instead of the incoming of the cotton. Some of the cotton is ordered out by number. It depends entirely on the account. Some of our interior customers who maintain (R. 1737) headquarters in the interior of the state, and concentrate with us, always order out by number. Mr. Kempner works his cotton up into even running grades and staples on arrival, or as near as he possibly can; it gives us an opportunity to assemble the cotton into even running grades and staples and segregate it, so that when we want that particular cotton, we can know just where to go and get it. He would give us an order to ship a shipment of strict middling, even running grades and staples to France, for instance, and we would check that cotton and advise Mr. Kempner of the particular cotton we shipped. It would not be as difficult to break out that cotton as it would be by numbers; it is a decided advantage [fol. 479] to the customer to work his cotton up on arrival. Our dray works right around the platform. Our press room is approximately 80 feet wide, less an 18-foot runway. That would give us 62 feet proper by 500 feet. The most of our cotton is trucked within a distance to the truck of, say, 100 feet (R. 1738). There are many cases where the drays go right even with the place where the cotton is. We put 20 bales of cotton in a dray. When a

customer orders out by number 100 bales, and we have gone into the warehouse and picked it all out by numbers, the truck men bring it to the press and press it. When it is pressed, it will be moved back into the press room to one location together. Then the dray would be brought in and put as close to it as it conveniently could get, so as to save the trucking as much as possible. That platform is 62 feet wide. It extends the whole length of the warehouse. We do not compress any of our cotton on arrival (R. 1739). It would not be a good operation in the compress business to press a part when it comes in and a part when it goes out. We own our own drays. We always have a little more cotton to deliver than our dray lines will conveniently carry, and we employ outside transfer companies that do that work. Our drays consist of seven electric trucks, with side saddles, that haul about 20 bales each. We truck all the way from pier #10 to the Southern Pacific Dock, around 60th street I suppose. I have not undertaken to estimate what the average haul is on our truck (R. 1740). If the going is good, they make a round trip in about one hour and twenty minutes. If they are held up by railroad trains, it takes them longer. That sometimes happens. On loading into cars, practically the same system is followed, our tracks run all the way up and down the warehouse and we can pick out the cars, with the consent of the rail-
[fol. 480] roads; they tell us what car to use. We make more empties than we load; the number of cars that we load out is negligible. It would be cotton going east of the Mississippi, and our business is not very extensive in that way. We do not switch to the water front, and I do not know what the rate is (R. 1741). It is more convenient to deliver by dray. There is delay in switching. On Exhibit A-65, the cost for loading cars does not include anything for tiering. One square-headed bale will stand up by itself. I would not say that compressed cotton is usually square-headed. There are different shapes (R. 1742). I think it is very difficult to stand compressed cotton on end by itself in single bales. I do not know. We do not tier that cotton; we block it together in a solid mass (R. 1743). Sometimes we have 50 bales, and sometimes 2,000 or 3,000 in that solid mass (R. 1744).

[fol. 481] WITNESS C. A. MITCHELL

I am Assistant General Manager of the New Orleans Joint Traffic Bureau, which position I have held for a little more than two years. I have been in transportation and traffic work for 16 years, having started in 1910. I started in a local freight office. The New Orleans Joint Traffic Bureau is a voluntary Association organized without profit to serve the various interests of New Orleans and the New Orleans Cotton Exchange is one of our constituent bodies. Since my connection with the Bureau, I have specialized in handling of traffic matters, pertaining to the movement of cotton (R. 1749).

My Exhibit A-66 is a map of the Port of New Orleans, bringing up to date the information shown in Mr. Giessow's Exhibit A-21, filed at the former hearing. It shows in red, the various compresses and cotton warehouses located in the port of New Orleans. Since the former hearing, the plant of the Union Warehouse Co., on the extreme right of the map, has been put in operation as a cotton warehouse. At the time these exhibits were prepared, what is now the Alabo Press was known as the Union Warehouse Company. The change has been made in the last week or so I believe (R. 1750). My exhibit should be changed by substituting the name "Alabo Compress Company, Inc." for "Union Warehouse Company, Inc.," on the red line at the top of the series of compress companies shown on the map. This facility began operation in October, 1925. It is located between Charbonnet, and LaManche Streets, and runs from just back of the levee to Chartres Street. It is behind what is known as the Charbonnet Street Wharf. The wharf is owned by the State of Louisiana, and controlled and operated by the Board of Commissioners at the Port of New Orleans, generally known as the Dock Board. The checkered line that runs between the facility and the wharf is the levee. The facilities shown in this Exhibit as Virginia and Mississippi (R. 1751) presses was shown in Mr. Giessow's former exhibit A-21 as the Virginia Press. The facility shown as the Federal Compress and Warehouse was shown on Giessow's exhibit A-21 as the Pellican Press, which has since changed ownership. I [fol. 482] do not think that the Virginia-Mississippi Press has changed ownership. The Pelican Press was taken over

and re-named the Export Compress and Warehouse Company, which exhibit A-37 of Mr. Dalzell's referred to, and then later the entire interests represented by Mr. Taylor at Memphis, the Newburger interests, the name was changed to Federal Compress and Warehouse Company, so the name of the Pelican Press when first to Export Compress and Warehouse Company, later changed to Federal Compress and Warehouse Company. It is all the same facility. There is no connection between the letter of Waters-Hay found in Mr. Dalzell's Exhibit A-37, and the Alabo Press (R. 1752). The Crescent City Press and New Planters' Press, shown on Giessow's Exhibit A-21, and the location of which is indicated on this exhibit by (1) and (2) have since discontinued operation. They are not named on my exhibit. The exact location of the New Orleans Compress Company is not shown on this exhibit because the land area which it covers does not include the site of this plant. Its actual location is indicated by the arrow pointing to the extreme left of the (R. 1753) map. It is located a mile or so beyond the left-hand part of the map. The Pelican Press, now the Federal Compress and Warehouse Company, although the nearest to the river of any of the city presses at New Orleans is not located on the water front. That was stated at the last hearing, and it is still true. It is not adjacent to a wharf, as a street and a number of railroad tracks intervene between the compress facility and the wharf, and in application of charges, drayage, and every other respect, it is strictly an uptown press.

My exhibit A-67 brings up to date information formerly carried in Mr. Giessow's exhibit A-22, showing the names of cotton facilities at New Orleans and their capacity in bales including the facilities owned by the railroad in New Orleans as well as the others indicated on my previous exhibit. It shows a total capacity of cotton compresses and warehouses, exclusive of those operated by the railroad, of 556,000 bales, and of the railroads' facilities 158,000 bales total 714,000 bales. This is an increase over the capacity at the time of the former hearing (R. 1754). My [fol. 483] exhibit #A-68, shows the Cotton Compresses and Warehouses in New Orleans, other than railroad, their storage capacity in bales and the facilities at such compresses and warehouses for the compression of cotton.

There is a total of 12 presses which compress both standard and high density. There are two facilities, the Mississippi Press and the Louisiana Compress Company, which have no compresses. None of the railroad facilities indicated on the exhibit just preceding are provided with compresses.

My exhibit #A-68 brings up to date information formerly shown in Giessow's exhibit A-23.

My Exhibit #A-69 is a statement showing the ownership of compresses and warehouses located in the city of New Orleans, bringing up to date the information formerly shown in Giessow's exhibit A-24. The Commercial Press and Warehouse Company, which Mr. Giessow explained was not located on railroad tracks, is now served by the Public Belt Railroad at New Orleans (R. 1755). The total investment in compress and warehouse facilities, other than those owned by the railroad in New Orleans, represent approximately $8,945,000.00, made up as follows: Public Cotton Warehouse, $6,500,000.00; New Orleans Compress Company, $1,000,000; Union Compress Company, $120,000.00; Louisiana Compress Company, $30,000.00; Federal Compress & Warehouse Company, $275,000.00; Terrell Compress & Warehouse Company, Virginia and Mississippi Press combined, $300,000.00, they are under the same management and control. Union Warehouse Company, now the Alabo Compress Company, $500,000.00; Commercial Press & Warehouse Company, $220,000.00. There is no connection between what is shown on here as the Union Compress Co., and the Union Warehouse Company, Inc.

My exhibit #A-70 shows the location of high density compresses in the southwestern states of Arkansas (R. 1756), Oklahoma, Louisiana, and Texas. It brings up to date Giessow's exhibit A-25. We are advised that the high density compresses at Helena, Arkansas, and Shreveport, Louisiana, shown on the former exhibit A-25, have been discontinued. We have no definite information as to whether high density compresses are still in operation at Ft. Worth, Texas, and Jacksonville, Texas, as we received [fol. 484] no replies to our letters. It is highly probable that they are. The information on this exhibit was obtained from everybody from letters. There may be that

there are high density compresses located at other cities in the southwest, but the ones listed are the only ones as to which we were able to secure definite information.

My exhibit #A-71, showing the charge per bale for compressing various classes of cotton at the points (R. 1757) shown, or those listed on my exhibit A-70. These are direct quotations by the compress facilities of their charges. They did not list the services that they perform for the various charges; we simply asked them what they charged to compress cotton from flat to standard, from flat to high density, and from standard density to high density, and they quoted us their tariff charges. I know that at New Orleans the 60¢, which is uniform at the port, includes an additional band. We did not investigate to see whether or not the services are all the same (R. 1758). My exhibit #A-72 is a statement showing the switching charges at New Orleans from the various compress and warehouse facilities to three representative wharves, or docks on the city front of New Orleans. In addition to switching charges, when the cotton is handled to the wharf facilities in cars, there are other charges which must be paid, for instance, where the compress does not enjoy compression, there is an outward loading charge into the cars of 10¢ per bale; also an unloading charge at the dock of 6¢ per bale. The 6¢ charge is the standard charge, but some of the facilities secure a 5¢ charge by making special (R. 1759) contract. The Public Cotton Warehouse secures an unloading charge of 4.4¢ per bale under contract. In addition to the unloading charge, there is also a tollage charge [fol. 485] of 15¢ per ton, ¾¢ per 100 pounds. This exhibit brings up to date the information shown in Giessow's Exhibit A-27. My Exhibit #A-73 is a statement showing a comparison of rates to New Orleans, Houston and Galveston, from representative points in the southwestern states of Oklahoma, Arkansas, Louisiana and Texas for depot and shipside delivery. It brings up to date the information shown in Giessow's Exhibit A-28, showing the difference between the delivery and shipside rates from these various representative points to port. This exhibit brings together to each port the depot and the shipside rate shown here under columns A and B, respectively, and shows under (R. 1760) column C the difference. The for-

mer Exhibit A-28, carried the rate from the same points to the same ports then in effect, but showed only the rates. Only depot rates on uncompressed cotton are shown, as shipside rates are not provided as it is not exported. Since the previous exhibit was filed, there have been numerous changes in the rates, but the difference between depot and shipside rates are substantially the same, except at Houston, where there has been the ½¢ in the spread, effective in the fall of 1924, following the increase in wharfage at Houston from 1½¢ to 2¢ per 100 pounds. From points in Arkansas and Louisiana, as well as all points east of the Mississippi River, the spread at New Orleans is 5¢. This is no true in connection with the rates in Texas and Oklahoma, due primarily to the equalization of export rates to New Orleans with those to Galveston and Houston, while our domestic rates from the two states mentioned are higher than domestic rates to Galveston and Houston. In this regard, there has been no change since the former hearing (R. 1761). The domestic rate from Dallas, Texas, which is representative of northeast Texas, to Galveston and Houston is 80¢, and to New Orleans is 96¢, whereas [fol. 486] the export rate to Galveston and Houston is 85½¢, which export rate is extended to New Orleans under the scheme of port equalization. The northeastern section of Texas referred to is that portion of the state on and north of the Texas and Pacific Railway from Shreveport, Louisiana, to Ft. Worth, Texas, and on and east of the Texas and Pacific Missouri Kansas and Texas Lines from Ft. Worth north through Whitesboro to the Oklahoma-Texas state line. It also extends to embrace points west of Ft. Worth on the Texas and Pacific Railway all the way across the state. As to Oklahoma, the domestic rates, generally speaking, are slightly higher to New Orleans than to Texas ports, while the export rates to both ports are the same, and Oklahoma City is illustrative of this. There are a few points in Oklahoma where the spread between the domestic and export rate is as much as 1 cent, and a few where the domestic rate to New Orleans is slightly higher than the export rate to shipside (R. 1762).

My Exhibit #A-74 is a statement showing receipts and disposition of cotton at New Orleans for the season Aug. 1, 1923 to July 31, 1924, and Aug. 1, 1924 to July 31, 1925.

The exhibit covers receipts from all sources, and includes cotton moving into warehouses, and also cotton moving through without stopping at the port. For the season 1924-1925, it shows there was received a total of 2,104,139 bales. There was an export movement for that season of 1,379,102, or 65.54% of the total. The coastwise movement amounted to 245,929 bales, or 11.67% of the total. The origin territory here is not confined to the southwest; it is all the cotton states (R. 1763). The movement by rail to northern mills was 1,776 bales, or nine-hundredths of one per cent. The movement by rail to Western mills was [fol. 487] 4,786 bales, or twenty-three hundredths of one per cent of the total. Movement by rail to the Southern mills was 459,024 bales, or 20.81%. The local consumption at New Orleans was 34,949 bales, equally 1.66% of the total. The slight excess over the total bales received of a little more than 1,000 bales, was taken from the stock on hand from the preceding season. Under the heading coastwise is shown the cotton that moves to northern mills by water from New Orleans.

My Exhibit #A-75 is a statement of rates on cotton in cents per 100 pounds from Dallas, Texas to Houston, Texas City, and Galveston, Texas, and New Orleans, Louisiana, shipside, for export, showing several characters of (R. 1764) movement. The purpose of this exhibit is to show the advantage that Dallas now enjoys over the ports mentioned by having cotton compressed to high density at Dallas. The charge for high density compression at Dallas is 20¢ per 100 pounds, and the compressed in transit rates of the carriers provides for the absorption out of such rates of not to exceed 18¢ per 100 pounds for compression. By having cotton compressed to high density instead of standard density at Dallas when moving for export, the Dallas shipper may have the benefit of 12¢ per 100 pounds absorption by the carriers, leaving only 2¢ per 100 pounds that he has to pay in addition to the rate to the port. The figures between the first two perpendicular lines are based on the present rates. The first item shows the rates to the several ports, including compression by carriers and shipside delivery. This rate is 85½¢. The second item shows the rates to the ports (domestic delivery), based on carriers' compression to standard density between origin and the

port, and high density compression at the port. Rate to [fol. 488] the ports is shown on line A, and to the Texas Ports includes an addition of 2¢ for wharfage. The rates to New Orleans had to be split into two columns because our domestic rate from Dallas happened to exceed our ship-side rate. The rate to New Orleans under column 1 is the domestic rate (R. 1765) with ¾¢ per 100 pounds tollage added. The rate under column 2 is the rate to New Orleans which is ultimately protected by filing of concentration claim after the cotton is exported. The third entry covers the movement of flat cotton to the port and compression to high density at the port and the total. If the cotton had been previously concentrated, we would be subject to a 3½¢ concentration charge which would increase the figures shown here by 3½¢. There is no export rate on this movement lower than domestic rate (R. 1766). The fourth entry is based on compression at Dallas to high density, the carrier absorbing 18¢ and the shipper paying the balance of 2¢ per 100 pounds. All the columns are headed "Shipside" because they give the total cost to shipside. The 82¢ is the domestic rate plus wharfage, and when the men at Houston pay 15¢ to compress it to high density, (R. 1767) that puts it to shipside (R. 1768). Under the movement covered by the second entry, that is, carriers' compression to standard density between the origin and the port, with high density compression at the port, the total rate, with high density compression costs and wharfage to Houston is 97¢, to Texas City 92¢, and to Galveston 97¢, while to New Orleans, it is $1.11¾ including tollage, under column 1, and $1.00½ under column 2, the column 2 rate being ultimately protected. Compared to the total charges just made, the movement under the fourth entry shows that the total charges a Dallas shipper would be put to, including the extra compression cost, is 87½¢ to all of the four ports mentioned. This gives Dallas an advantage over the port [fol. 489] concentrator through high densitying cotton as follows: advantage over Houston, 9½¢ per 100 lbs; advantage over Texas City, 4½¢ per 100 lbs; advantage over Galveston, 9½¢ per 100 lbs; advantage over New Orleans, column 1, 24½¢, column 2, 13¢ per 100 lbs. (R. 1770). I have also shown at the bottom of the Exhibit the advantage to the Dallas shipper on cotton handled as de-

scribed under the fourth entry as compared to the movement to the port flat described under third entry, and this advantage is shown opposite the line marked 3 vs. 4 at the bottom of the Exhibit. All of it is based on high density, and is based on any cotton that was compressed from flat to high density at the carriers' expense where the carrier absorbs 18¢ at Dallas. I would not say that the carriers never absorb any part of the cost of compression when they pass a compress. I know that they do in other states; I do not know about Texas (R. 1771). It is my understanding that they will pass a compress in Arkansas at the request of the shipper (R. 1772). The transit tariffs at Memphis permit the movement of flat cotton past many compresses into Memphis, and the carrier ab-orbs out of the through rate the cost of compression. I do not know of a line that does not permit movement past the compress at Memphis. The situation here pertaining to shipments from the Dallas Press, would apply in very much the same manner from other interior high density compress points (R. 1773).

In the next block of rates, separated by the perpendicular line, I have shown the rates to the same port on the same character of movement based on the one rate plan, if the spread should be eliminated by increasing the domestic (R. 1774) rate. In the case of Dallas and New Orleans, the domestic rates being already in excess of the export rate, no change would result at New Orleans, there being no spread to eliminate. In the third block, the same information is shown based on the one rate plan if the spread should be eliminated by reducing the export rate. This exhibit shows that Dallas already has an advantage by handling the cotton in the manner described of 9½¢ per 100 lbs, over Houston and Galveston, and over New Orleans of 13¢ per 100 lbs. which, by eliminating the spread, would increase the advantage to 13¢ over Houston and Galveston, [fol. 490] and over New Orleans the advantage remains 13¢, but the advantage over New Orleans would not remain 13¢ at points where our present shipside rate is higher than our domestic rate, as will be shown by Exhibits to follow. This is based on high density also.

My Exhibit #A-76, a companion to the preceding one, shows the same information based on Little Rock to the Ports. From all Arkansas points, the New Orleans ship-

side rate exceeds the domestic rate by 5¢. The charge for high density compression at Little Rock is 25¢ per 100 lbs. instead of 20¢ as at Dallas (R. 1775), and this leaves an extra compression cost to the shipper of 7¢ over the amount absorbed by the carriers. The advantage to the Little Rock concentrator, as shown on this Exhibit is 5¢ per 100 lbs. over the Houston and Galveston concentrator, and 3¾¢ per 100 lbs. over the New Orleans concentrator, and if the existing spread of 5¢ should be reduced to 2¢, the advantage would be increased to 8¢ over Houston and Galveston, and 6¾¢ over New Orleans. There is no uncompressed rate from Little Rock to the ports.

My Exhibit A-77, shows the same information for Monroe, La. The high density compression cost is also 25¢ per 100 lbs. at Monroe, leaving an extra compression cost of 7¢ over the amount absorbed by the carrier.

My Exhibit A-78 is a statement of the handling charges at New Orleans as published in Agent W. P. Emerson's Joint Demurrage, Storage, and Handling Charges Tariff 4-A, I. C. C. 98, applicable on various commodities, compared to the handling charge of 5¢ on cotton (R. 1776). These handling charges were before the Commission in I. & S. Docket 1293, 61 I. C. C. 379, and were approved though the Commission found they were below the actual cost to the carrier of performing the service. I think that [fol. 491] the handling charge on cotton is reasonable for the service performed, compared with the charges on other commodities (R. 1778). The application of the one rate plan to New Orleans would disturb the relationship of Little Rock and other Arkansas points, vs. Memphis to New Orleans, fixed in I. & S. Docket 1431, 69 I. C. C. 318, if Arkansas rates to New Orleans are changed without similar changes from Memphis to New Orleans. If the rates are disturbed from Memphis to New Orleans to preserve the relation Memphis vs. Arkansas, then disruption of relations New Orleans vs. Savannah, Georgia, fixed in I. & S. 1431, would result, unless the changes were extended to Savannah. By Savannah, I mean to include the south Atlantic Ports group. To advance the domestic rates from Arkansas and Louisiana points on the Missouri Pacific Railroad intermediate to Memphis, Tennessee, and Helena, Arkansas, without similar advance from Helena and Mem-

phis, would result in creating fourth section departures. Rates from these intermediate points in Arkansas and Louisiana on the Missouri Pacific through West Memphis, Maryana, Barton Crossing, McGehee, Arkansas, and Monroe, Louisiana, and the Missouri Pacific line through Budori, Arkansas, Pallulah, and (R. 1779) Ferriday, Louisiana, are presently on the Memphis basis, observing the Fourth Section. Memphis and Helena to New Orleans can not be disturbed without disturbing the relationship at South Atlantic Ports, as already pointed out. That is just to show that Fourth Section violations would be created unless the Memphis rates were advanced (R. 1780). The present rates from Arkansas points as well as Memphis and Mississippi Valley points to New Orleans were fixed as maximum reasonable rates in I. & S. 1431, 69 I. C. C. 318. From points in Louisiana, the present rates to New Orleans were fixed as maximum reasonable rates in I. & S. [fol. 492] 1859, 85 I. C. C. 5. The present rates from Arkansas and Mississippi Valley points to South Atlantic ports were also fixed as maximum reasonable rates in I. & S. 1431, 69 I. C. C. To increase our domestic rate now, and wipe out the spread would mean to make rates that are in excess of the rates fixed by the Commission in these cases where they fix the present rates as maximum reasonable rates (R. 1781). The decision clearly indicated that the Commission intended to establish a definite relationship between Memphis and Little Rock rates. Following the decision of the Commission in I. & S. 1481, the Westside Carriers continued to absorb 5¢ spread, or handling charges from Arkansas out of the one rate that they applied. It was not until the Commission decided, Docket 11,965, and suggested that you might add 5¢ that we got into the two rate class. Memphis was preparing to file a complaint against that situation in Arkansas where the 5¢ was added from Memphis and not added from Arkansas when it was adjusted in this case (R. 1783). If the carriers had attempted to continue the one rate plan, the same rate to shipside as to New Orleans locally, from Arkansas, that would have resulted in litigation in behalf of the Memphis interests. We were having heated correspondence about the carriers' failure to observe the relationship that the Commission had intended in connection with I. & S. 1431. There

is therefore a 5¢ spread between domestic and export rates to New Orleans from points east of the Mississippi and in Arkansas and Louisiana, but the compelling force of carrier and port competition cuts down the export rates from Texas and Oklahoma below the domestic rate.

The domestic consumption at New Orleans was 43,632 bales in the season 1922-1923; 38,648 bales in 1923-1924; [fol. 493] and 34,949 bales in the 1924-1925 season. The average for the three seasons was 39,076 bales. Any increase in the domestic or depot rate to New Orleans would increase rates on this traffic, which is not involved in this case and which no cause for increase has been shown. From points on the Southern Pacific Line in Louisiana, except the Alexandria Branch, and from points in Louisiana on the Gulf Coast Line, there are no joint through rates to Carolina or southeastern mills. The same is true from local stations on the Texas & Pacific Railway in Louisiana to southeastern mills other than Carolina Mill points.

From points on the Louisiana and Arkansas Railway, the Louisiana and Northwest Railway, Chicago, Rock Island and Pacific Railway (R. 1788), and Vicksburg, Shreveport and Pacific Railway in Louisiana, and from all points on all lines in Arkansas, joint through rates do not apply via New Orleans. An increase in the domestic delivery rates to New Orleans, which are used to make the combination through rate, would create an increase in the through rates on this traffic via New Orleans. Aside from the increase, it would affect the relation of New Orleans vs. Memphis, Helena, Vicksburg and Natchez to the detriment of New Orleans by increasing the rate via the New Orleans market, and gateway without similar increases via the other markets.

The effect of an increase in the domestic delivery rate would be to increase the cost to merchants using uptown facilities at the ports in order to equalize the location of those facilities with the location of others nearer the water front. That would result in saddling on to the cotton shipper, merchant, or concentrator, the cost of equalizing the location of warehouse facilities. The shippers and mer- [fol. 494] chants, and not the warehouses and compresses, pay the freight rates. Some of the uptown warehouses and compresses at New Orleans are situated more remote from

the water front than others, and as a consequence, their drayage and switching costs are higher to the water front. The switching or drayage absorption by the carriers under a one rate plan to put cotton from the (R. 1789) Commercial or Terrell Compress, as an example, to shipside, which is 25¢ per bale drayage, or $7.00 per car switching, would not accomplish delivery from the New Orleans Compress Company, which is 50¢ per bale drayage, or $17.80 per car switching. The drayage allowance at New Orleans is 15¢ per bale. The actual drayage at New Orleans is a minimum of 25¢, running up to 50¢ per bale. If a one rate plan were established, a drayage allowance of only 3¢ per 100 lbs. to New Orleans would accomplish no purpose. The drayage absorption of the carriers would have to equal the drayage cost; otherwise, cars would have to be furnished and switching absorbed. At the time of the year when cotton is moving, all available equipment is needed, and the carriers could not retain at the ports for switching services, sufficient equipment to meet the situation without seriously depleting the car supply to move the crops.

The ports can not avoid buying cotton that has previously been concentrated in the interior in a large number of cases, (R. 1790), due to the fact that a large part of the crop is financed by cotton factors located in the interior market points under an agreement which requires it to be shipped to the factor for handling and sale for which he collects a fee. Such cotton is generally shipped to the factor immediately it come from the gin. The factor has a sort of first lien on the cotton. Many producers hold cotton for better prices, and since they are not equipped to store [fol. 495] it, they store it in cotton warehouses. Such storage also gives the producers opportunity to borrow money on the warehouse receipts (R. 1791). Cotton handled by the Farm Bureau of Arkansas is handled at the interior compresses, and shipped to them under arrangements made before it is picked, and is sold by the Farm Bureau only after it has been concentrated. The port operator, therefore, is frequently put to the necessity of buying cotton that has been concentrated. He is further removed from the producing territory than the interior merchant who has opportunity to get it first. On all cotton that has been previously concentrated, the one rate plan would put the

port at a disadvantage as compared to the interior of an amount equal to the penalty of 3½¢ per 100 lbs. To escape the penalty the cotton merchant would have to avoid buying any cotton at concentration points in the interior, which would be impossible. When cotton is shipped from these [fol. 496] interior markets to the ports, it is shipped as a local shipment and the port concentrator, (R. 1792) does not know whether it has been concentrated or not. Sometime later, the seller of that cotton at the interior market files a concentration claim, using inbound expense bills from country origin point to the market, and the local bill of lading from the market to the port, claiming the through rate, and he is just as apt to apply these expense bills against the bill of lading covering the cotton that he has shipped to the port, as he is to apply it against any other outgoing bill of lading. The port concentrator's shipment immediately changes status, and becomes subject to the concentration penalty, a fact of which he does not become aware until he files a claim and the railroad checks the billing. It has been shown that a great amount of cotton handled at so-called water front facilities must be switched or drayed to wharves other than those adjacent, and all such cotton would be subject to the same conditions as that handled back from the water front.

[fol. 497] At the present time, we have no transit arrangement via the Missouri-Pacific Railroad nor via the lines operating east of the Mississippi River for protesting to the port concentrators the through export rate to shipside. The shipside rates from these points are 5¢ higher than the domestic (R. 1793) rates, and the interior concentrator can ship direct to shipside on those rates. The port concentrator storing cotton in warehouses at New Orleans from points on the lines referred to pays the domestic rate, and having no arrangement for redelivery of the cotton, puts it to shipside either by dray or by switch movement at his own expense. If switched, he must also pay a charge of 5 or 6¢ per bale unloading from cars to wharves. Whether handled in drays or cars he also has the added expense of tollage, which is ¾¢ per 100 pounds. The minimum drayage expense would be 5¢ per 100 pounds, and the tollage added thereto makes the cost to the port concentrator at least ¾¢ higher than the cost to the in-

terior concentrator. The tollage at New Orleans is absorbed by the carrier when the shipside rates are applied, and they are applied on cotton moving from the interior to shipside (R. 1794).

My Exhibit A-79 is a tariff of the so-called city cotton compresses at New Orleans, bringing up to date Mr. Green's Exhibit No. A-32 filed in the former hearing. There are some changes. Item 5 of the former tariff, loading domestic shipments in cars for line movement, (R. 1795) shows a 10¢ charge for loading, and Item 5 paragraph D, of the current tariff shows a charge of 15¢. I stated this morning that that charge was 10¢. The change was effective with the effective date of this tariff, I think. I understand it is simply an increase in the charge, and that no additional services have been added. This delivery charge is not absorbed by the railroads under any circumstances (R. 1797). There was formerly about three days free time in connection with the storage provisions, which I understand in the new tariff is changed to ten days. That is shown in Section B, Item 1, in a note. Item 1 provides for a charge of 20¢ per bale for handling cotton into storage, which includes ten days free time, and formerly that charge did not exist, nor did they allow ten days formerly. There was only 2 days free time and the 1¢ started immediately after that. The physical conditions testified to by Mr. [fol. 498] Green as to the manner in which the cotton was handled at that facility, and the facility itself, are unchanged (R. 1797). The same interests that own the Federal Compress also won interior presses. The Federal Compress charges 75¢ for high density compression and out of that absorbs the cost of drayage to a ship; that cost is 25¢ per bale (R. 1798). One of the exhibits shows the charge at Monroe, Louisiana, the compress owned by the same interests, and the compress at Little Rock owned by the same interests; their charge is 25¢ per 100 pounds, (R. 1799) or $1.25 per 500 pound bales for high density compression. The charge for standard density compression is 18¢ per 100 pounds. The average weight per bale in Louisiana and Texas, I believe, runs over 500 pounds. The passing of compresses is permitted at interior points in Arkansas, Little Rock, Arkansas, may draw cotton from points on the Missouri-Pacific all the way out to the Okla-

homa line, passing four compresses on its way to Little Rock, mainly, Conway, Morrillton, Van Buren, Arkansas, and Sallisaw, Oklahoma (R. 1800). They had no penalty for passing the last time I inspected the tariff, Missouri-Pacific I. C. C. A-6572 (R. 1801). I know that the Illinois-Central permits the passing of a compress at Dyersburg, Tennessee, and Covington, Tennessee, and protects the through rate via Memphis, and pays the cost of compression on that (R. 1802). While the Frisco makes a charge for concentration of cotton generally, the charge is no greater where it goes beyond the compress to another compress and is compressed than it would be if it came from between two compresses. A great portion of the cotton which arrives at the public warehouses moving to shipside moves out via wharves other than that adjacent to the public warehouse.

Cross-examination:

I would say that the rate that now applies to New Orleans on cotton shipped from Texas and Oklahoma is practically a one rate plan. There is a slight difference at Oklahoma of about ½¢, and in some cases 1¢. From northeast Texas we have two rates, but it so happens that our export rate is 10½¢ lower than the domestic rate ,instead of the other way around (R. 1804). That leaves Arkansas, Louisiana, Missouri and Missouri-Pacific points in Okla-[fol. 499] homa as the only Western states that have the 5¢ spread to New Orleans. The 5¢ handling charge on Exhibit A-68 includes 5 or 6¢ a bale for unloading cotton from cars at the wharves, switching, tollage, etc. The expense of holding cotton longer in the cars without demurrage is another cost. The Illinois-Central Railroad finds it necessary to unload the cotton and re-handle it to shipside in drays, practically altogether, and they pay from 25¢ to 40¢ a bale to get that to the wharf, and they charge 25¢ to the shipper (R. 1805). That is done mainly to release the equipment, I would think. The competition between New Orleans and the South Atlantic ports is on export movement, including concentrators at those ports using the domestic rates. I do not think that there is active competition for Arkansas cotton between cotton mills at South Atlantic ports and cotton mills at New

Orleans (R. 1806). We have a two rate plan at South Atlantic ports, the difference being 5¢; I think that exists from points west of the Mississippi River as well as east, but I know it exists from east (R. 1807). The New Orleans cotton mills do buy some cotton locally. The cotton bears the freight. We do not have any through rate on cotton from Arkansas via New Orleans to destinations east of the Mississippi River. The through rate from Little Rock to Greenville, South Carolina, is $1,03 via Memphis. The combination via New Orleans would be $1.31 at the present time (R. 1809). I think the combination on New Orleans would be as much greater than the combination on Memphis to the South Atlantic ports as it is to Greenville, South Carolina. On cotton shipped from Arkansas to New Orleans for re-shipment to New England mills via the Coastwise Steamship Line, the shipside rates are usually applied, or if it came in on the domestic rate, the shipper [fol. 500] would have to get his cotton shipside, which would approximate the persent shipside rate (R. 1810). I do not contemplate any increase in the present shipside rate from Arkansas to New Orleans as the result of this case. I think quite a quantity of cotton moves from New Orleans over the wharves owned and operated by the Illinois-Central Railroad. I understand there is no wharfage or tollage charge assessed against that cotton. The wharfage at the municipal dock amounts to ¾¢ per 100 pounds (R. 1811). The Illinois-Central docks are used for cotton which comes in by the Illinios-Central. I do not think as a general practice that cotton coming in over other roads would be handled over the Illinois-Central docks. We have through rates from Arkansas through Memphis to New Orleans, and we also have through rates from Arkansas to New Orleans via west side lines. The shipside rates are not any different because of that difference in the wharfage charges at New Orleans. The lines that have to use the city front wharves absorb out of the shipside rate the ¾¢ tollage to equalize it (R. 1812). As representing the port of New Orleans, I would not favor a different rate conditioned upon the difference in the wharfage charges alone at the different ports or at different docks at the same port. We think the present spread of 5¢ is the proper spread (R. 1813). We are not urging that the rates to shipside

Houston and Galveston be made any higher than the rates to shipside New Orleans because of any difference in the wharfage charges. We do not want the export demurrage tariff cancelled; I do not think it would do us any good. It would not injure the port interests if they were cancelled at all other ports at the same time (R. 1916). I understand there is a lighter or barge service at New Orleans from [fol. 501] some of the cotton facilities to others, specifically from the Alabo plant. I understand there is a substantial movement of cotton in New Orleans on the through export bills of lading at 5¢ higher than the local delivery rate (R. 1817). The Illinios-Central people say that 38% of their cotton is through export bill of lading cotton; most of their cotton comes from east of the River. The same situation exists there as in the case of other lines, which is a 5¢ difference. Shreveport is an important interior concentrating point (R. 1818). We have the same domestic rate from Shreveport to New Orleans as applies from Shreveport to Houston. At Houston the export rates and the domestic rates are the same. The New Orleans interests would protect against reducing the rates from Shreveport on export cotton to shipside Houston by the one rate plan. That equalization applies through a large part of North Louisiana (R. 1819). According to my understanding, about one-third of the total cotton coming to New Orleans moves on through export bills of lading; I mean about one-third of the export cotton (R. 1820). I would say that on a large amount of cotton that is finally exported the local rate is charged and the carrier service ends at the compress. It may be a small proportion of the total. I really do not know. We do not have the second free concentration in New Orleans now; there is a penalty of 3½¢ [fol. 502] that we have to pay for second concentration (R. 1821). We pay nothing for first concentration west of the River, except in connection with the Missouri-Pacific. We do not have transit with the Missouri-Pacific like with the other lines. They assess a penalty of 6½¢ on cotton arriving at New Orleans which has previously been compressed and a penalty of 7½¢ if it reaches here flat, and these are only authorized in connection with movements from points in Louisiana. We have no transit from the Missouri-Pacific in Arkansas and Missouri. There is a

12¢ spread between flat and compressed cotton from Louisiana points to New Orleans. We have no flat rate from Arkansas. I think we pay the combination on that, and it is greater than 12¢. Where the drayage is as high as 50 or 55¢ a bale from the compress to the shipside, they switch the car and pay $17.80 a car, because it would be cheaper (R. 1823). If we took second concentration and paid 3½¢ for that, the carriers would have to absorb the cost of getting it to shipside, but in addition to that we would have to pay the shipside rate instead of the domestic rate, which would be 5¢ more plus 3½¢ for concentration if it was second concentration, making 8½¢ per 100 pounds more. In the case of Texas, where the export rate is 10½¢ lower than the domestic rate, it would be cheaper to take second concentration. Where the export and domestic rates are the same, it would be cheaper to take second concentration and pay the 3½¢, which would be about 18c a bale, rather than pay 40 or 50¢ drayage; but he would not pay the drayage. He would switch it in a car. If the switching charge in the car made it low enough (R. 1824) per bale that it would not pay them to file that second concentration claim, they wouldn't do it. On 100 bales of high density cotton placed in a car, the switching charge of $17.80 a car would be 17.8¢ per bale; there would be no benefit for them to pay 18¢ a bale penalty in order to get 17.8¢ back. If the cotton came in on the Texas & Pacific, the carrier would not absorb the switching charge; if it came in on the Louisiana Railway and Navigation Co., or the Southern Pacific, or the Gulf Coast Line, it would. The transit tariff provides that where the warehouses in which the cotton is stored is not on their own rail, even though they will protect the export rate and handle it to shipside, they will not absorb the switching out of that facility to shipside (R. 1825). [fol. 503] We have no transit privilege on the Missouri Pacific. There are some through point rates on cotton from Louisiana to the southeast. The Southern Pacific, except on their Alexandria branch, have no through rate. The Gulf Coast Lines have no through rate. The Louisiana & Arkansas, and the Louisiana & Northwest and Vicksburg, Shreveport & Pacific, while they have through rates via other gateways, have none through New Orleans. The Texas & Pacific has no through rates to Southeastern mills

except to the Carolinas. From Texas and Pacific stations to the Carolinas, local stations, as well as Shreveport and Alexandria, they have through rates. We have through rates from Louisiana to the New England mills via New Orleans and the Coastwise Steamship Line. They are not quite general. We have them in connection with the L. R. & N. and the Texas & Pacific. There are through rates in connection with the Vicksburg, Shreveport and Pacific, but they grant no transit at New Orleans, so, as far as we know (R. 1826) there is no movement. I do not think the Gulf Coast Lines or the Southern Pacific have any through rail and water rates to New England, unless, possibly from such points as Alexandria and Shreveport. We have a full line of rates on cotton to New Orleans in connection with the Barge Line, the Mississippi River Barge Line, which are lower than the all railway to New Orleans from Arkansas and from Memphis. Also from certain points in Oklahoma on the Rock Island and Frisco. I think the Barge Line grants a concentration privilege in connection with those rates at New Orleans. They will take cotton from the Alabo press and barge it out to the ship on their shipside rate. That is the only transit privilege I know of, and there may be no penalty in connection with that (R. 1827). I understand that ships come to the Charbonnet Street Wharf and take cotton. Generally speaking, the Missouri-Pacific Railroad is the only railroad that carries the 76½¢ rate from Memphis and intermediate Arkansas points to New Orleans. There are a few points, I believe, on the Frisco where they protect the 76½¢ rate. That rate is confined to the lines straight down through Mariana, McGehee, Arkansas, Monroe and Alexandria, and also the river line that runs down through Eudora, Arkansas and through Ferriday, Louisiana (R. 1828). The rates from the balance of Arkansas to New Orleans are considerably higher than 76½¢.

[fol. 504] WITNESS W. SCOTT HAMMOND

I am engineer assistant to the General Manager for the Board of Commissioners of the port of New Orleans (R. 1830). My Exhibit No. A-80 shows the wharf facilities at the Alabo warehouse. The wharf is indicated by the

portion outside of the feather edged line shown as the crown of the levee. It is owned by the State of Louisiana and is operated by an agency of the State of Louisiana, the Board of Commissioners of the port of New Orleans. The Mississippi-Warrior Barge Line, the Federal Barge Line, has the preferential assignment at that wharf (R. 1831). That means first call on berths. We allot most of our wharves along the city front to various steamship lines and others under a preferential assignment. If the steamship line that has a preferential assignment in that particular berth uses the berth to its capacity, they can have it to the exclusion of all others. The Alabo Warehouse Co. has no preferential right there. The distance from the front of the Alabo Warehouse to the wharf log is 371 feet and 6 inches. All of the space on the wharf not shedded is open. The wharf shed is 60 feet wide, and begins behind an 8 foot apron. Cotton cannot be stored on any portion of that wharf facility by the Anderson, Clayton Co. or the Alabo Warehouse longer than the usual free time granted steamship cotton. It is operated just as any other public wharf in the ports (R. 1832). I think the free time on outgoing shipments is ten days. The Board of Commissioners owns the shed covering the mechanical conveyor running from the warehouse out to the wharf shed, and the warehouse company owns the mechanical conveyor under the shed. The Mississippi-Warrior Barge Line approached the Dock Board for permission to extend this trolley system to the wharf shed. When the barge line brings cotton down the river for unloading in this facility, I understand that 48 hours free time is granted for that cotton passing over the wharf into the warehouse (R. 1833). The conveyor on the extreme right is used by the Mississippi-Warrior Barge Line for taking the cotton off of the barges arriving at the wharf. It has a mechanical chain haul contrivance. They truck the cotton out, using hand trucks, and they come up to this chain haul and a lug en- [fol. 505] gages in the axle of the hand truck and takes the truck right on up to the level of the wharf. That conveyor is also shedded. I have seen cotton taken from the barge and up to the wharf. That is as far as I have ever seen it handled. I have not seen them take it down and load it in the car (R. 1834). There is another conveyor

there belonging to the warehouse which is used to load and unload those cars. The other conveyor belongs to the warehouse company. The shed has been on the wharf since October, about the time the Alabo Warehouse Company took over the wharf. The Alabo Warehouse people would not be permitted to place cotton indiscriminately and as long as they please under this shed for merchandising purposes and storage (R. 1835). The shed is practically an open shed, the framing is wood, covered with corrugated iron, and the corrugated iron comes down just about 4 feet from the eaves, and from there on down to the ground it is open. Under the laws of the Dock Board, it would not be possible for the Alabo Warehouse to cover over the territory between the front of the warehouse and the shed on the wharf for storage purposes for cotton. We do not run warehouses for storage on the water front. It would not be our policy. All the sheds on the water front are transit sheds, not warehouses. The distance from the back of the wharf shed to the front of the warehouse is 303 feet and 6 inches (R. 1836). The floor between the two conveyors is partly a boarded floor, but in the back you have a strip of concrete. That is on all of our wharves and is known as a rat-proof section. It is at the same level as the wharf. The Dock Board maintains a watchman, as we do at all wharves.

Cross-examination:

The Mississippi-Warrior River Barge Line is the government barge line. It has no authority to make any contracts with anybody else for the use of that facility (R. [fol. 506] 1837). A good portion of the part behind the shed that is called "open-wharf" on the blue print has been recently constructed. The Board of Commissioners paid for it. We are working on plans to cover over that portion of the wharf back as far as the heavy white line towards the crown of the levee. It has not yet been finally authorized. I have worked on a good many of the plans, however, to have a steel shed covering the whole thing, giving an area of about 110,000 square feet. That will be done at the expense of the Dock Board. When that is done, it will be approximately 150 or 200 feet from the wharf to the warehouse, with the levee between them. It

is against the policy of the Dock Commission to permit the construction of warehouses on the levee. The rule that [fol. 507] warehouses are not to be constructed on the wharves is a matter of policy rather than a matter of the law of the State of Louisiana (R. 1839). We consulted the Alaboe Warehouse Company when we started to enlarge the wharf by the construction of the additional open wharf and also about the further plan to make a covered wharf out of it. If this organization had not gone in there to put in a high density press and built a warehouse, we would possibly have not made these improvements, or unless someone else had come along with a similar proposition. At the same time it was agreed that the warehouse company should construct out upon the wharf and own on the shedded part of the wharf a trolley system for the delivery of cotton to and from the wharf. This plan shows three conveyor runways. The one on the extreme right is one that is used by the barge line for the handling of other commodities than those which are destined to the warehouse (R. 1840). Those commodities would be unloaded on that wharf from the barge and transferred along the covered shed to the extreme right up to a point adjacent to the line of railroad tracks shown as "Louisiana Southern Railroad." Cotton is also transferred on that conveyor when coming into the wharf. Everything coming in on the wharf is unloaded at that point. Cotton destined to the warehouse would not be carried onto the extreme right end of the shed; it would come up to the level of the wharf. We have an escalator there. It brings out all the cotton and other materials which would be on the barge (R. 1841). The cotton which is going to the warehouse would be placed on the Alaboe Warehouse Company's trolley for taking to the warehouse. There are also vessels that dock there for the handling of outbound export cotton. The superintendent of docks for the Dock Board has charge of the assignment of berthing space to vessels carrying cargo out from that wharf. That wharf is not used to any extent for the purpose of shipping out export cotton. We would like to build up the biggest possible business there. The steamships usually berth to the left of the last conveyor at the upstream end. The downstream end is used for the barge line (R. 1842). It has to

be that way because the barge line usually has a barge at the downstream end. In operating their barges, they have to have a barge against the wharf to get the level correct, [fol. 508] and they truck from the barge, bringing the cargo across this barge and that keeps the adjustment between the wharf and the other barge. They have an escalator at that end of the wharf also, equipped to handle barge traffic at the downstream end. The steamship company would have to have some control over the part of the shed that it assembled its cargo in for outbound loading, so as to check its cargo and designate the place for it to be placed on the wharf. One end of the wharf you might say is generally assigned to or used by the barge line and the other is assigned to various steamships from time to time by the Dock Commission (R. 1843). When a shipper has cargo booked over a certain steamship, the agent of the steamship, knowing that the cargo will be at a certain facility, will take up with our Board the matter of getting an assignment of a loading berth at that facility (R. 1844). Then the superintendent of docks would assign him a certain berth, if he did not have a preferential berth. It is handled just the same as the other wharves under our jurisdiction. It is used for more than one steamship line; any line can come there. There is only one berth there. Steamships shift from one dock to another in the port of New Orleans, just as they do at pretty nearly every port I know anything about (R. 1845). They have shifted more than once before they get a full cargo. They go wherever they can get the cargo. The operators of the Alabo Warehouse have no jurisdiction whatever to assign berths to ships at this facility shown on Exhibit A-80. The Alabo Warehouse pays a tollage for the use of that wharf just as it would over any other wharf facility. The State of Louisiana owns the space between the levee and the warehouse, and it is under the jurisdiction of the Orleans Levee Board (R. 1847). The railroad tracks go alongside the warehouse, but there is no platform. There is no railroad track serving the docks. It is about 370 feet from the end of the railroad track to the front edge of the wharf. I think the operators of the Alabo Warehouse perform a plant service in delivering cotton from their warehouse to this dock. I understand that the open space between the

two warehouses has been vacated (R. 1848). The ground on which the wharf facility is built is also under the control of the Orleans Levee Board.

WITNESS C. P. WALKER

I am Vice-President and Manager of the Alabo Com- [fol. 509] press (R. 1849). My Exhibit A-81 is a blue print showing the layout of the Alabo Compress Co. and the wharf which serves that facility. We began the operation of the warehouse shown on this Exhibit on October 7, 1925. Cotton is brought in either by rail or by barge. Cotton coming in by rail is unloaded on the railroad tracks which appear on the east side of the warehouse. Cotton coming by barge comes to the foot of the conveyor that belongs to the Mississippi-Warrior Barge Line, is loaded on the conveyor and run up to the top of their escalator, where it is delivered to the Alabo press. We weigh*t* it, sample it, have the cotton classed, and then put it in the warehouse, after it is compressed to high density for storage. We use a trolley system from the barge line that runs the entire length of the warehouse, around the Chartres Street end and back up on the dock. That is shown on the blue print by a dotted line (R. 1850). When cotton is unloaded from cars, it would be on the track on Charbonnet Street, which is nearest to the warehouse. That would also be carried through the press room and then to the portion of the warehouse where we store it. My company concentrates cotton and performs the ordinary services that are performed by concentration warehouses. We have three methods of delivery from this warehouse to various destinations. One is to the steamship on the dock, at the up-river portion of the dock, 350 feet long. Another method is by lighter to any part on the city front. The third method is by car or by dray. Cars and drays are used to the city front. When it goes out by car from the warehouse, it would be delivered from the compartment to the nearest car on the track. We would put a car at the door of the warehouse and load it direct into the car (R. 1851). The drays call for cotton at this warehouse on the Lamanche Street side, at any door.

When cotton goes out by lighter, it would be handled on to the wharf, but instead of being put on the wharf itself, it would be carried down on to the Mississippi-Warrior's house boat and from thence loaded on to the lighter. The 200 foot berth at the water front is for the use of the Mississippi-Warrior Barge Line. They have two house-boats there which are kept there all the time. The 350 foot berth is for steamships. The barge line has handled some Ford parts over their house boats (R. 1852). There is very little of other commodities handled by the barge line except cotton. The barge line handles only inbound cotton. They do lighter cotton to other steamships. The literage [fol. 510] charge is 10¢ a bale. When we have cotton that is ordered out for a steamship, it may be in any one of the various compartments. We have seven compartments. I see that the blue print has e*gith*, but No. 6 is at present an open space. We contemplate closing that space. The cotton is trucked to the conveyor, loaded on the conveyor, and carried on to the wharf. We take the cotton off of the (R. 1853) conveyor and put it into the steamship berth as directed by the steamship clerk. A bale in compartment No. 5 would be put on the conveyor at the nearest door, at either side of the warehouse. There is a door on either side. We would truck it to the nearest car to the trolley; the trolley is outside of the warehouse. It would then move around the trolley to the wharf. It makes a turn where the ship part strikes the trolley runway and goes back. The trolley does not run as this dotted line is shown, to the extreme end of the wharf. That part of the wharf was not completed at the time the trolley was put in there (R. 1854). It turns about the "h" and the "a" in the word Charbonnet, and does not go quite to the present upstream end of the wharf. It is contemplated to construct it to the end of the wharf. When the cotton gets to the wharf on the trolley, it is taken off and put in the steamship berth under the direction of the steamship clerk. The steamship clerk designates what portion of the berth shall be used for the various lots of cotton. The Alabo Compress pays for the labor of taking it from the trolley and putting it in the place designated. When the shedded portion of the wharf is extended back, the part of it that is adjacent to the berth, within reach of the ship's tackle, will be considered at the

steamship berth (R. 1855). The compress warehouse is built as closely to the water's edge as it can be. It comes right to the toe of the levee and we cannot go upon the levee with anything. By actual measurement, it is 152 feet from the warehouse to the part of the wharf as it will be extended. The extension is to be placed at the check line; the double line on the back part of the wharf marked "back side of the wharf as it is to be extended through." The dotted straight lines are today open space. There is a floor there (R. 1856). We cannot store cotton in our respective compartments with respect to the location of the car or dray or ship that may take it out. We never know where the cotton is going when we store it in the warehouse. We [fol. 511] have one high density press. The solid line in the press room is the press; the dotted line is the foundation for another press. I do not think there is any present plan to construct another press. There is a plan to add a second story to the warehouse (R. 1857). The present capacity of this warehouse is 35,000 bales high density. If the second story is added, that will increase the capacity 30,000 bales. The steamship agents do not sign for any cotton when it is in any part of the warehouse. We have never asked them to and would not want them to. We do not want anybody in the warehouse that is not under our control. Cotton must be within 200 feet of the ship's tackle before the steamship agents will sign for it. They require us to have the full lot out of each mark. The total cotton which we have received by the various methods since the warehouse opened on October 7 up to April 15 is 67,105 bales; cotton received by barge, 52,785 bales; by dray, 795; by switch movement, 7,240, and by rail, line haul, (R. 1858) 6,285 bales. The last figure is cotton which comes direct from some interior point all rail. It is switched to our plant, but that is contrasted with the movement which may be switched from some other facility to our plant. None of it is lightered. The outbound movement since the facility opened has been 43,326 bales by the different methods. All rail, 4,299; switch movement and dray, 21,927; by lighter, 6,709; delivered to steamships, 10,391. The cotton which is lightered would be lightered alongside some other steamship at some other wharf (R. 1859). So that approximately half of our cotton has been switched out of the fa-

cility to other facilities and approximately 17,000 out of the 43,000 has moved out from the water front by steamship and by lighter. We have compressed approximately 58,000 bales at that facility. The compress has been running very irregularly. I would say that it operates to full capacity about 20 or 25 days out of the season. About 30 days out of the season it has not been operated at all.

Cross-examination:

We can put 100 bales through the press in an hour (R. 1860). That means putting it to high density from either flat or compress. All of the cotton coming in by barges is handled by the Mississippi-Warrior Barge Line. We have not handled any on a transit privilege. They do not absorb any of the drayage for delivery to shipside. I am [fol. 512] not familiar with the transit privilege (R. 1861). Of the outbound cotton going out by dray and rail, I would estimate that about two-thirds of it goes out by dray and the other by rail. It is all export. The principal volume of the movement out of that warehouse is for export. The capacity of each compartment is 5000 bales high density; we have 9 fire walls, including the outside walls. (R. 1862). We do not handle any cotton for the account of anybody else in that warehouse except Anderson, Clayton. We may if we increase the size of the warehouse. It will be open to the public for cotton only. When the barge line brings the cotton in, they do not pay the cost of getting it to the conveyor. They deliver it to us at the head of the escalator (R. 1863). We truck it from there to the conveyor. The steamship agents, however, will accept and receipt for cotton going within this shed just on the wharf. When the whole plant is shedded they will receipt for cotton at any place on that dock, within 200 feet of the ship. We will then have a minimum distance of 152 feet to transport the cotton. That is the shortest direct line from our warehouse (R. 1864). Cotton going direct to ships from cars will be unloaded on to the conveyor and be trucked up to the wharf. The cars will be on the east side of the wharf. There will be no difference that I know of in service between the Louisiana Southern Railway setting a car on that track to be loaded to ship or to be loaded into our warehouse. The escalator is a machine that belongs to the Mississippi-War-

rior Barge Line that reaches down from the top of the wharf to the houseboat at the water's edge, and is used largely to handle merchandise and cotton (R. 1865). They bring the cotton up on that. It does not take the cotton to the railroad tracks; it only reaches to the top of the wharf. The barge line has to hand truck general mechandise to the railroad tracks from the top of the wharf. Cotton has to be trucked about 50 or 60 feet minimum from our trolley to the conveyor. Cotton coming in on these railroad tracks would be received by the steamship company on the wharf (R. 1866). We would have to take it to the wharf. Where the cotton was not owned by our company, we would not handle it between the railroad and the wharf. It would be moved by the cars to the wharf by some forwarding company. The stevedores operate on that wharf. They would [fol. 513] not go up and take it from the cars. I do not know whether the railroads deliver it from the cars to the wharf. They cannot hand truck it from there to the wharf, or if they did, it would be a very expensive operation. It is only 150 feet but it is uphill. The conveyor in our warehouse is a sort of labor saving device (R. 1867). The drayage charge from the Alabo press to the city front wharves is 25¢ below Canal Street and 30¢ above. That is per bale. Even if it were possible to move the trolley over so that we could take cotton on and off of the conveyor without trucking, it would not be done under our plan of operation, because we take the cotton off and weigh it and sample it before sending it to the press room. There is no specified limit as to how much cotton we must have in the warehouse before a ship will come and get it; I understand the custom is about 1000 bales, but that is up to the steamship company and the shippers. We have to have 300 bales or more for the barge line in order to get that price of 10¢ a bale for lightering. They will deliver at any wharf in New Orleans alongside of the steamer for 10¢ a bale (R. 1868). We take the cotton from the conveyor and sample it and weigh it before it is carried to the press room. It is marked on the open part of the dock, and on the closed part of the dock adjacent to the 200 feet the barge line has. That is part of the wharf property. We do not store any cotton there; we have it there 48 hours as the limit. We do have the privilege of merchandising it there for 48 hours; it

usually moves out the same day it comes in (R. 1869). We never take it off of the conveyor and carry it to the sampling room and then truck it back or trolley it back to the wharf for a steamship without carrying it through the press room. It has to be compressed first. The cotton has to be weighed and sampled before it goes to the press room so that we will not destroy the package after it is compressed, in drawing a sample (R. 1870). I think we have handled about 400 bales for other firms at this plant. There is no reason why we could not; the warehouse was completed late and we did not solicit any other business.

WITNESS E. H. LOCKENBERG

I am superintendent of the public cotton warehouse, New Orleans. The public cotton warehouse is owned by the Board of Commissioners of the port of New Orleans, an [fol. 514] agency of the State of Louisiana. There have been no changes in the facility as to storage room or capacity and the wharf facilities used by it since the former hearing (R. 1871). I now confirm my former testimony relative to the manner of handling cotton at that facility and the distance it has to be trucked. At the time of the former hearing, we were using exclusively trucks and trailers, motor trucks, but since that time we have been using about three or four tractors and trailers in addition to the motor truck equipment (R. 1872). In regard to cotton on which we do not enjoy a compressing, which moves straight through the warehouse to shipside, we were charging 15¢ per bale for placing that cotton on the wharf adjacent to our facility at the time of the former hearing, but that charge is now 20¢ per bale. The storage rate was 7 mills per day per bale at the time of the former hearing, and it is 1¢ per day per bale on standard compress cotton and 1¼¢ per day on flat cotton at the present time. At the time of the previous hearing, we did not publish a handling into and out of storage charge, and today we have a handling charge of 20¢ per bale which covers the cost of handling into and out of storage and also entitles to 10 days free time. My Exhibit A-82 is the current tariff of the public cotton warehouse, bringing up to date my Exhibit A-31 filed for-

merly (R. 1873). The storage capacity of the warehouse is the same as it was; we did not then and we do not now store cotton on the wharf house for account of patrons. It is used exclusively for transit business.

Cross-examination (R. 1874):

The shaded portions on Exhibit A-30 are two-story runways leading from the five units. Each one of the units has two floors, and these runways, one leads up to the lower wharf and the other leads to the upper floor. They are covered runways. About three or four years ago, the Dock Board undertook to have estimates made of the cost of installing a trolley system around the warehouse, but they found the cost would be so expensive that they gave up the idea. It is a feasible proposition. The tractors which we have purchased since the former hearing are used to take cotton from the warehouse to the wharf house and also from the warehouse through the street to city front wharves; we do not use the electric trucks on the streets; [fol. 515] they are only for warehouse service, they are operated by storage batteries. The places marked "G Field" and "H Field" show where the warehouses would be constructed in the event that we enlarge the facility (R. 1876). We have used those spaces up to about two years ago for the ranging of cotton on receipt. At the present time we range cotton on the galleries of the five units marked "K" and "J." The berthing space at the facility is 1,440 feet; it will take care of about four ships. We do not ship out all of our export cotton by ships at this wharf house, because the steamship companies will not come there and get all of it. There are too many lines to serve one facility, and besides lots of the steamers have regular docking wharves to which you have got to send your cotton to them. None of the steamers lease their own berthing facilities. The only thing they have is to pay their regular dockage and sheddage and some of them work on a preferential assignment (R. 1877). A large number of different lines call at our wharf house; practically all of them at different times. Berthing space is assigned at our facility in practically the same manner as testified to by Mr. Hammond at the Alabo wharf. All berthing space in the port of New Orleans is assigned by the superintendent of docks. If a

steamship agent would be satisfied to sign for cotton in the warehouse proper and then assume the expense of moving it to the wharf, that arrangement would be satisfactory to us. It would not be satisfactory to have a portion of our closed warehouse for the delivery of cotton to ships (R. 1878). The part marked "wharf house" on Exhibit A-30, next to the river is a two-story building. The steamship employees will accept cotton delivered to them in the second floor of that building. They have now a portable conveyor to go right along the outer track that is right flush with the top floor and is just the same as trucking it from the ground floor. They go to the second floor and take it to the ship at their own expense. There are two story runways between the warehouse and the dock house. There is no substantial difference between placing a carload of cotton on the track adjoining the wharf house for delivery to the steamship agent and placing a carload of cotton on the track of the warehouse just back of the wharf house. The Public Belt Railroad Co. makes delivery of all cars to the warehouse and to the wharf house and uses (R. 1879) the same lead to reach all tracks. If the steamship company [fol. 516] makes a request to be allowed to dock at the Alabo dock, and if there was not a boat there and the berth was not occupied, the Dock Board would certainly give it to the steamship company (R. 1880). For the season 1922, 1923, out of a delivery of 241,000 bales handled at our facilities, 50,000 bales, or 20% were delivered over our warehouse wharf house (R. 1881). The other 80% went out by drays or cars or went to city front wharves. For the season 1923, 1924, there was out of a total delivery of 426,000 bales, 184,000 bales delivered over our wharf house, about 43%. The 57% went out by car movement and all various kinds of movements. About 35% of the cotton handled through our facility moved out to wharves in New Orleans other than the wharf adjacent to our facility. That does not include the Morgan Line. Practically all coastwise cotton moves out over other wharves, with the exception of one or two boat loads a season or so ago. That cotton gets to the wharves either by drays or cars, not by lighter. We use our own drays. Cotton is trucked a minimum distance of 1,000 feet up to 4,000 from points of storage in the ware-

house to the wharf facility, and about 400 feet from back of the warfhouse to the front of the closed storage unit. The distance from the back of the wharf house to the front of the closed storage unit is about 400 feet; and the open space between, except for the runways, is open space. For the season 1923, 1924, about 8% of our cotton went out by all rail (R. 1883). The Morgan Line movement that went coastwise was practically 10%. The local mills got about 3%. It is a considerable saving in many instances to dray cotton to other facilities to reach a ship that is loading there rather than to wait for the ship to come to our wharf. That saving of time means a saving of interest to the man who is selling the cotton. As I understand it, in regard to a trolley system, the warehouse should be built [fol. 517] around the trolley system, not the trolley system around the warehouse. At the time this warehouse was built, the idea was to use electric motor trucks (R. 1884), and, since that time, as I said, investigation has shown that the expense of installing the trolley system here would be too great. It would cost about half a million dollars. Not only the interest on the investment and the expense incurred in the installation, but the junking of about $60,000 worth of motor equipment, are the factors that decided against it. We do not pay the expense of operating the machine that lifts cotton off the second floor of the wharf. The second floor arrangement is just the same as the first floor. We have a portable platform that leads right beside the ship and you can take the cotton out of there and go over that platform and come back over it. That platform is owned by the Dock Board. The Dock Board does [fol. 518] not recognize labor organizations of any kind. We do not operate under the stevedores' tariff. That is the labor of the steamship company. It is, however, not unionized at our place. As far as I know, the same regulations govern as to the employment of labor at New Orleans and other ports. The steamship company either does it with its own labor or employs a stevedore to do it for them (R. 1886). The cost of going 200 feet to pick up cotton is a steamship regulation, and the same regulation governs at New Orleans as at other ports. The 200 foot rule, as I understand it, is laid down by the employees of the steamship companies. When we get the cotton to the ware-

house back of the wharf house and unload it, we are not allowed anything by the railroad for unloading. To my knowledge, the shippers do not get anything back (R. 1887). When the cotton is switched to the wharf house on a through bill of lading export, the contractor for the railroad company unloads it. I think he charges the railroad company about 5 or 6¢ a bale. Each railroad company has a different contract (R. 1888). There is a wharfage or tollage charge of 15¢ a ton.

WITNESS C. A. STANG

I am assistant general freight agent for the Illinois-Central Railroad, and am located at New Orleans; I have been in that position since 1920. The first paragraph of note 16 on page 4 of Glenn's Port Cotton Tariff No. 15-A, I. C. C. A-526, reads as follows: (R. 1891) "Rates published herein to New Orleans, Louisiana, except as provided in item 13 page 3 apply for New Orleans depot delivery, Louisiana. The term 'depot delivery' means delivery of shipment to warehouse or cotton yard of the Illinois-Central Railroad, and the Yazoo and Mississippi Valley Railroad or delivery of shipment of not less than 10,000 pounds each to cotton presses, industries, or warehouses at New Orleans, as authorized in Illinois-Central and Yazoo and Mississippi Valley freight tariff 2-D, I. C. C. No. 6700, supplement thereto and re-issues thereof, provided such cotton compresses, industries, or warehouses do not effect shipside delivery."

It is possible for the public warehouse at New Orleans to effect shipside delivery. If a shipment of cotton is ordered for delivery to a steamship on the public cotton ware-[fol. 519] house wharf, we assess 25¢ a bale in addition to the rate to New Orleans proper. If a shipment consigned to New Orleans is consigned to the public cotton warehouse and there taken into that warehouse, we effect delivery to that public cotton warehouse on the basis of the New Orleans proper rate. Of course, they do not make direct shipside delivery. The tariff does not specifically say "handled by the warehouse (R. 1892) direct to shipside delivery," but that is the way it is construed. The domes-

tic rate is applied on any cotton that goes in to the public warehouse for local handling, and it is not applied where the cotton is on its way to a ship; the export rate is applied in the latter case. If the cotton is taken from the car to the boat we assess the export rate, if it is taken to the wharf house, to the space set aside for the steamship agent, we assess the export rate. But if it goes into the warehouse for any purpose whatever, we assess the domestic rate, because we know that the man getting the cotton cannot defeat the export rate, because the public cotton warehouse also assesses a charge for receiving the cotton from the car at the warehouse. The Illinois-Central does not absorb that charge (R. 1893). It does absorb the charge for unloading when it goes to shipside, and assesses 25¢ a bale in addition to the New Orleans proper rate to cover that delivery. Our attention has recently be- called to the looseness of that language and we now have under consideration revamping that rule so as to make it absolutely clear, and to make the rule conform to the actual practice. The words "effect shipside delivery" are construed to mean delivered direct from cars to the wharf. It was never intended by that rule to decline to deliver shipment to the public cotton warehouse on the domestic rate. I do not know of any warehouses just across the tracks from the wharf house where the car could be unloaded either on one side into the wharf house or on the other side into the warehouse on the city front (R. 1895). The intention of the tariff was to prevent anybody from making shipside delivery on less than the rate to New Orleans proper plus 25¢ a bale. I do not know of any of the wharf houses in New Orleans that are situated in such a way that a warehouse is immediately across the tracks from the wharf house and within 200 feet of the ship's tackle.

[fol. 520] Cross-examination:

You cannot dray cotton in New Orleans anywhere for less than 25¢ a bale. It costs us 25¢ a bale, and I suppose we have as fair a contract as any railroad or individual in New Orleans (R. 1896). I do not think that cotton could be unloaded from a car through the press to shipside and be said to be unloaded direct from a car. The rule does not run only to cotton compresses. It also says "industries

or warehouses." The rule was to prevent unloading direct from a car ordered to the city front opposite a wharf and defeating the 25¢ charge (R. 1897). On a carload of cotton that was coming to a compress on a through bill of lading, stopped and compressed at that compress, and shipside delivery then effected from the compres to the ship, we would apply the New Orleans proper rate, and they would have to handle it to shipside themselves. If cotton is moving on a through bill of lading, we would not let it get out of our possession to go to a compress. We have no transit rules at New Orleans contemplating the pressing. On a steamship bill of lading marked "For export," we would make delivery direct to the steamship line and be through with it. I do not think we would issue a bill of lading marked "For export" and consign to a compress, the Alaboe compress, for instance. I doubt that we would, I could not say positively. Assuming that we would, the New Orleans proper rate would be applied (R. 1898). We would do that, because we construe this item to mean shipside delivery, and by direct shipside delivery we understand taking the cotton out of the car and putting it to shipside. We have construed this item to relate wholly to delivery of cotton from car to shipside (R. 1899). If a cotton warehouse were built on the Industrial Canal and located so that they could handle the cotton direct from the cars to the shipside, we would give serious consideration to fixing the tariff in connection with that warehouse to prevent the application of less than the rate to New Orleans proper plus the handling charge. I do not know that we have handled any cotton to the Alaboe warehouse, but I think that we would assess the domestic rate there. I am quite sure we would (R. 1901). We do not assess any wharfage on cotton exported over the wharves or docks owned by the Illinois-Central Railroad at New Or-[fol. 521] leans. The word "presses," used in the item we were discussing, is a term that was used here years and years ago. The Southern Railway first put it in, and I do not know what they had in mind. I do not suppose they ever gave any particular consideration to the facilities (R. 1902) as they exist today. I understand that there is a facility in the City of New Orleans known as the Mississippi Press which has no compress, and a facility known as the Louisiana Press which has no compress (R. 1903). We

would refuse to permit a shipment billed for export to get out of our possession until we had the receipt of the steamship company, but if they insisted on this cotton going to a compress then we would have to have the nature of the shipment changed and we would deliver it to them on the domestic rate. If the steamship agent would agree to receipt for it after it is compressed, I do not know just what we would do in that case (R. 1904). Note No. 16 says nothing whatever about through shipments (R. 1906). Its purpose was to limit the application of the rate in tariff 15-A to depot delivery. Our Terminal Tariff and the Terminal Tariffs of all individual lines carry a rule providing for the delivery of domestic cotton to the public cotton warehouse on the New Orleans proper rate, because the cost of handling is greater than the 25¢ published handling charge. Tariff 15-A makes reference to the Terminal Tariff in the omnibus clause (R. 1907). The item number is Note No. 28 of Glenn's Port Cotton Tariff A-525. Note No. 13 of the same Tariff reads: "Export cotton moving on through bills of lading shall not be delivered to port compresses until first receipted for to the rail carrier by the steamship line to which final delivery is required to be made." When we have delivered the cotton to the steamship agent, we have done all we have to under the export tariff. The test of whether or not the export rate should be applied is really whether or not it is an export shipment [fol. 522] (R. 1908). When cotton is moving into any warehouse for merchandising purposes, our interpretation is that that is a local delivery to that facility, whatever it may be. A shipment concentrated in the interior and shipped in 50 or 100-bale lots to be delivered to a steamship line for export is considered an export shipment wherever delivered and the export rate is applied (R. 1909).

We participate in through joint rates on cotton from points in Arkansas for both domestic and for export and coastwise. We have never applied a difference or lower export rate on cotton exported over the wharves of the Illinois-Central than is applied on similar cotton exported over the wharves of the municipality or the public wharves at New Orleans. I do not see how we could reasonably expect any difference in the shipside rates at New Orleans because of a difference in the wharfage charges assessed

at one dock as compared with the wharfage charges at another dock at New Orleans. We would have an advantage that the other lines would not stand for (R. 1911). For my own selfish interests we would like to see it. From past experience, I know that the lower rate would be very promptly met by the other lines.

WITNESS J. T. STOCKTON, JR.

I have figures from the New Orleans Cotton Exchange showing the total amount of cotton handled at New Orleans in the present season up to yesterday. They show: total receipts, 2,502,287 bales; total exports, 1,538,623 bales; total coastwise and all rail to eastern and southeastern mills, 704,588; stock on hand, 311,351; approximate ex-
[fol. 523] port, present season through the port of New Orleans via all steamship agencies serving the port, moving on through export bills of lading, 451,500 bales. In arriving at the last approximate figure, each steamship operator in the City of New Orleans was consulted in an effort to obtain this information. I did not undertake to ascertain the point of origin of the cotton (1913).

Exhibit A-33 shows the location of the tracks at the Long Reach plant at Houston as they are to be after the completion of the construction work now going on. All export cotton moving into the Long Reach plant and handled by me the past season, prior to the time that this construction work was started, was unloaded either on Track No. 3, which was served by trolley line operating on the 12-foot receiving platform, or on Track No. 1, but no cotton whatsoever was unloaded on Track No. 2, which served the warehouse proper (R. 1914).

Cross-examination:

I understand that very little cotton has been moved to New Orleans the past season on a port export bill of lading. I do not have any figures (R. 1916).

WITNESS C. A. MITCHELL

Cotton on a through bill of lading for compression in transit would not be high density. What I had in mind

when I testified that cotton could pass compresses on the Missouri-Pacific going into Little Rock was cotton concentrated and high densitied under concentration and then billed out on the through rate from the point of origin [fol. 524] without any penalty. I intended to say compression and concentration (R. 1917). Cotton originating at a point in Oklahoma or Arkansas on the Missouri-Pacific may, under the tariff, pass a compress point or concentration point and be compressed or concentrated at Little Rock and move at the through rate. I do not mean by that that cotton is allowed to pass compresses everywhere, but I say there are such situations. Cotton can move from Russellville, a compress point, and points between Russellville and Morrelton, Arkansas, and pass through Morrelton, Conway or North Little Rock, Argenta or Little Rock for concentration, compression and reshipment with protection of the through rate without penalty. I have not checked all through the tariff, and I find that (R. 1918) at the beginning of the present cotton season, the Missouri-Pacific Railroad changed its policy somewhat, and generally speaking they do have something over the through rate where a compress is passed, but there are still exceptions. I do not think that the Missouri-Pacific is the only Arkansas line that permits that. The Frisco permits passing of compresses, but the situation on the Frisco is different in that the Frisco charges a penalty, no matter whether it has passed a compress or not, but they do not make any distinction as to whether it has passed one or two or three compresses (R. 1919). I would say that its concentration charge applies on all the cotton concentrated on that line. It applies everywhere the Frisco goes, except that it does not make a charge around Ft. Smith. It does not make a charge, as I understand it, in Oklahoma, either I do not know whether the Frisco applies a penalty for concentration at Hope, Arkansas (R. 1920). If there is a high density compress at Dallas and none at Terrill, Texas, and the Dallas press, having this advantage of high density, could [fol. 525] draw all of that cotton between Dallas and Terrill, the competition would force Terrill to put in a high density compress (R. 1921). Until last fall, it was the general practice that concentration points could be passed in Arkansas. I do not think the Rock Island ever practiced

it very much, but the Frisco and Missouri-Pacific did. The Frisco still permits passing of compresses without any greater penalty than if they did not in East Arkansas, and I understand, West Arkansas and Oklahoma, without penalty (R. 1922).

WITNESS E. B. GAINES

I live at Savannah, Georgia, and am here in the capacity of traffic manager for the Savannah Traffic Bureau. I filed an intervention in this case, and was joined by the Charleston Traffic Bureau. I testify here in behalf of both of these intervenors. The difference at Savannah and Charleston between the local rates and the shipside rates is 5¢ per 100 pounds (R. 1923). That condition prevails at all of the South Atlantic ports. We believe that the establishment of a one rate plan, the same rate on shipside cotton as on local delivery cotton, at New Orleans from points on and east of the Mississippi river would affect our rate adjustment very seriously (R. 1924). The South Atlantic ports get cotton from Memphis. We know a lot of that cotton does move into Memphis for concentration purposes and does move to Savannah from points west of Memphis (R. 1925). If the one rate plan should be adopted from Arkansas to New Orleans, and from Memphis to New Orleans, the rate relationship will be disturbed at Mobile, thence on to Pensacola, thence on to Jacksonville, Brunswick, Savannah, [fol. 526] Charleston, and all over the Southeast (R. 1926). The rate from Memphis proper is taken into consideration in fixing the rates to the South Atlantic. We have various cotton warehouses and high density presses at Savannah (R. 1927). The Savannah Warehouse and Compress Co. is located just north of the city, within the switching limits, on the banks of the Savannah river. The Gordon Press is located on the property of the Central of Georgia Railway, immediately adjaent to the Central of Georgia Railway property, right near the wharves of the railway, the warehouse running from 1000 to approximately 3000 feet. The Island Press located on the Seaboard Terminal over on Hutchinson Island, is at the head of Slip No. 2, and the distance from the warehouse down to the head of this slip will range from 500 to 1000 or 1500 feet. The Mutual Compress Co. is located on the terminals of the Atlantic Coast

Line Railroad, and the warehouses are approximately the same distance as those of the Gordon and the Island press. These facilities do a general warehousing business for cotton merchants, performing the various concentration services that are customarily performed by such warehouses (R. 1928). They have high density compresses; there are six in Savannah. The warehouse of the Savannah Warehouse and Compress Co. is located adjacent to the wharf. Deliveries from that warehouse to the ships are hand trucked or lightered by the warehouse company down to their wharf and loaded on a lighter, and from lighters they are lightered down to the shipside, wherever the ship may be berthed. The ships berth at one of the three different railroads. I understand that when the Savannah Compress and Warehouse Co. (R. 1929) was built, that some character of an agreement was made providing that they would not berth ships at their wharf for a period of ten years; that period expires some time this year. The wharf [fol. 527] of the Savannah Warehouse and Compress Co. is on water that is sufficiently deep for the ships to be berthed there. The recent Congress has enlarged the appropriation for the Savannah harbor, and this river will be dredged; the work is now under way so as to make the channel deeper, serving the property of this warehouse company. The depth there now ranges from 18 to 22 feet, but the project is to make it 24 feet. The depth at the railroad facilities now is 26 feet at low water, with a 7½ foot rise in the tide (R. 1930). The local rate is paid on cotton coming into the various warehouses at Savannah. In the case of the Gordon Press, they use hand trucks and electric trucks or a dray down to the head of what they call Lighterage, a little canal just large enough to accommodate a lighter. By trucking some distance, they could use hand trucks and carry it direct to the steamer's berth. That would be a thousand feet or more. It could be switched for $5.63 per car. The steamships do not receive cotton at any point other than in the loading berth. When a ship comes to Savannah, the berthing space is previously assigned. She goes there and all of her cargo is received, unless there are sufficient quantities of cargo at other (R. 1931) terminals to justify the shifting of the vessel. At the present time at Savannah all of the wharves that are being used for

export cotton are owned by the railroads. The wharf of the Savannah Warehouse and Compress Co. is the only wharf available that is not owned by the railroad interests. The Mutual Compress Co. is operated by the Savannah Warehouse and Compress Co. It is also so constructed and arranged that ships can be berthed there, by drayage, etc. That has not been done on account of the agreement with the railroad (R. 1932). The Mutual Compress gets its cotton to shipside at the present time in the same manner as the Gordon Press. They use electric trucks, or if the ship is berthed at a berth further away from the warehouse properties, they may find it more advantageous to switch. They use electric trolleys now, and they could extend that trolley system over to the wharf. The Compress Warehouse Companies at Charleston are all located on the river front. I do not understand that they have any agreement that will forbid them from docking vessels. They do now and have been docking ships at their properties. They export cotton direct from their wharves (R. 1933). The [fol. 528] wharves are adjacent or near to the warehouses and part of the property. I understand that they can use electric trucks or conveyor systems to convey the cotton. Possibly they do now. I do not know. The warehouses perform a general concentration and merchandising service. They take the local depot delivery rate at Charleston (R. 1934).

Narrative of the Proceedings Before the Interstate Commerce Commission in Docket No. 11965, Galveston Commercial Association et al., Complainants, Versus Alabama and Vicksburg Railway Company et al., Defendants; Docket No. 13991, Weatherford, Crump and Company et al., Complainants, Versus Alabama and Vicksburg Railway Company et al., Defendants; Application of Rates on Cotton to Gulf Ports, Docket No. 14940, at Dallas, Texas, June 4th to 19th, 1926

("Complainants' Exhibit No. A-48, substitute, witness Oppenheimer" was received in evidence as a substitute for the original Exhibit No. A-48.)

WITNESS J. M. LOCKE

I am connected with F. C. Locke and Co., Muskogee, Oklahoma, dealers in cotton. My firm owns about 2% of the capital stock of the Traders Compress Co. (R. 2011). I am testifying as a cotton merchant and not as a compress owner. I am a director and chairman of the freight and transportation committee of the Oklahoma Cotton Exchange, a State organization of cotton dealers, and am authorized to speak for that organization by the Board of Directors by resolution adopted February 24, 1926 (R. 2012).

Oklahoma produced more than 1,600,000 bales of cotton of various qualities last season. The cotton trade divides the crop into numerous qualities, probably 80 to 100 different qualities being produced in Oklahoma in an average year. The mills buy their cotton in even running lots, usually in 100 bale lots. The Oklahoma merchant buys cotton in lots of 1, 2 and 3 bales, and upwards, usually in lots of 25, 50 (R. 2014) and 100 bales, and each lot contains a number of different qualities. The merchants can seldom buy sufficient cotton at one point to make satisfactory sized shipments of even running grades to the mills. Consequently, it is imperative that he be granted the priv- [fol. 529] ilege of concentrating his purchases at logical concentration centers. The concentration privilege also encourages the building of warehouses where cotton can be properly protected from the elements and other damage. It is desirable that cotton be marketed uniformly throughout the year rather than thrown on the markets in the short space of time called the picking season. A small percentage of producers in Oklahoma utilize the cooperative plan of marketing to accomplish this purpose. The others require storage facilities near the point of production, where proper warehouse receipts are issued, against which they can borrow money, and thereby hold the cotton (R. 2015), without fear of water damage until they desire to market it.

In the development of a cotton business, the first concentration was done at the port and at a few large interior markets. Later it was found more economical to concentrate at points much nearer the source of production. Interior warehouses and compresses were built, and the con-

centration privileges granted by the railroads have been an absolute essential in the development of this plan of marketing. Interior concentration permits a prompt determination of the quality of cotton purchased, enabling the cotton merchants to meet the demands of the mills. It aids in obtaining a quick turnover of stock, and thereby reduces handling cost, such as interest, insurance, and storage (R. 2016). The amount of such handling cost necessarily affects the price which the producer receives.

Oklahoma produces a harder fibered cotton than most of Texas and Louisiana, and since hardness and strength of fiber is greatly desired by the mills, a merchant can obtain a better price for cotton shipped on an Oklahoma bill of lading. Recently one of the New England mills has asked us to guarantee that when we sell them Oklahoma cotton we will ship the cotton from Oklahoma points and not from Texas or Arkansas points, claiming that the difference in value of the cotton cannot always be detected by the eye and hand, but that it is readily detected by the mill's spindles (R. 2017). Therefore any construction of rates compelling the concentration of Oklahoma cotton at points outside the State would have a tendency to lower the level of prices obtained for Oklahoma cotton. The Oklahoma merchant is in a better position to determine the true value of the crop than the outside merchants, who have [fol. 530] to calculate a wider margin in order to avoid loss due to errors in judgment on the part of his buyer. There is always a considerable quantity of low grade cotton ginned in Oklahoma. Last season about 35% of it being lowered in grade and color due to climatic conditions, and a great deal of it being snap or bolly cotton (R. 2018). The handling of these low grades is a specialty, since it is necessary to seek out the mills who can use such qualities, and since it is impossible for the merchant to protect himself on such cotton against price fluctuations by the sale of future contracts. Oklahoma firms tried to build up a business with the mills using these low grades, and they are in better position to handle such cotton. In this way, the Oklahoma merchant is able to avoid a substantial economic loss (R. 2019). It is necessary for the Oklahoma merchant to depend upon his local banks to finance such low grade cotton, because the out of State banks usually specify that all cotton

financed by them shall be of such grades as are tenderable on the New York, New Orleans and Chicago cotton exchanges.

A penalty on interior concentration would have to be deducted from the price which the Oklahoma merchant pays for the cotton and would necessarily lower the price received by the producer. It would also place the out of State merchants who concentrate at the ports in a most advantageous position to the prejudice of the interior concentrator. The port concentrator has an advantage in the two rate plan now in effect. Under it the volume of transit cotton as compared to concentrated cotton has shown a marked increase each year for the past two or three years (R. 2020). In the past few years there has been considerable increase in the compress and storage facilities in Oklahoma, but a penalty on concentration would seriously affect the capital invested in these facilities and there would be no further prospects of enlargement in the future. In 1920 the Oklahoma compresses had a storage capacity of 169,790 bales. These figures include half of the capacity of the Ft. Smith and Van Buren compresses, because the management of these two compresses state that half of their receipts are Oklahoma cotton, due to their location with reference to the Southern Pacific and the Kansas City Southern. The compress capacity of the Oklahoma compresses including half of the Ft. Smith and Van Buren capacity is now 290,049 bales, an increase in 1925 over 1920 of 120,259 bales, or [fol. 531] 70%. The valuation in 1920 was $1,503,648.27; the present value is $2,845,461.56, an increase in the last five years of $1,341,813.29, or 85%. The valuation figures (R. 2021) in some instances are estimate, but are believed to be accurate. The Traders Compress Company, which operates fifteen plants out of a total of twenty, not including Ft. Smith and Van Buren, in 1920 had a capacity on open platform under sheds of 9,790 bales. In 1925 it was 2,150 bales, a reduction of 7,640 bales. The track capacity in 1920 was 442 cars; in 1925, 527 cars. The number of compress machines in 1920 was fifteen. Since that time two compresses have been dismantled, but there are four compresses with two machines each, making eighteen machines. In 1920 there were seven plants with a capacity of 70,500 bales, which carried Class B insurance. In 1925 there were

eleven plants with Class B rating with a capacity of 200,000 bales or an increase of 129,500 bales. In 1920 there were three plants with 24,500 bales capacity, having Class C rating. In 1925 there were three plants with 15,000 bales capacity, rating Class C, or a reduction of 9,500 bales. In 1920 there were five plants with 30,000 bales capacity rated Class D. In 1925 there was one plant of 5,000 bales capacity rated C, a reduction of 25,000 bales. This shows for the Traders Compress Co. an increase in the total storage capacity of 95,000 bales (R. 2022) and 129,500 bale capacity raised from a lower class to Class B, and a reduction in the lower classes of compresses. A penalty on the concentration privilege at interior compresses under the present two rate plan will have a tendency to force the Oklahoma cotton merchant to move his business to the ports; it will injure the present investment in compress and warehouse facilities; Oklahoma labor will lose wages it now enjoys; Oklahoma cities will suffer through decrease of taxable investment and population; Oklahoma banks will suffer through the fact that the cotton concentrated outside the State will be financed outside the State; and the Oklahoma producer of cotton will be injured through receiving a lower level of price for his commodity as a result of the loss of competitive influences If the one rate plan is adopted, I would not object to the carriers permitting cotton which has been previously concentrated in the interior to be stored at the port and delivered to the ship's berth without any penalty for the second stop at the port (R. 2023). The [fol. 532] waiving of the penalty in such case would possibly benefit the interior concentrating market by increasing the amount of cotton concentrated there. In my opinion it would encourage the large port merchants to buy cotton at the interior markets while otherwise they might be encouraged to avoid those markets where possible. A large percentage of the Oklahoma cotton moves all rail to the consuming mills.

Cross-examination (R. 2024):

I believe there are a larger number of grades of cotton produced in Oklahoma than in any other section of the same size; there is a large number in every general section (R. 2027). I would say that the logical point for con-

centration would be points so situated with respect to railroads that they can draw from a wide territory. There are 20 compresses in Oklahoma now, I believe (R. 2028). Each one is a concentration point, some for small areas and some for large areas. Under what we call the five point concentration plan in Oklahoma, the railroads have granted to the cities of Oklahoma, such as Muskogee, Ardmore, and Altus, wide concentration privileges, and given the privilege of passing other presses. Chickasha is included in the five point plan, but I am not certain whether it is given the privilege of passing other presses. It is located in a section which produces a great deal of cotton. The object of the plan is to permit the shipper to group his cotton and get all of his cotton to one of those five primary points. It enables the merchant to get a sufficient quantity at one point to make proper shipment (R. 2029). The system is of benefit to the cotton merchants of Oklahoma. I have no definite way of knowing, but I would say that 50% of our cotton would move to the ports and 50% would move all rail to the spinning mills. A considerable portion of the half that goes to the ports goes for export. [fol. 533] Part goes for reshipment purposes (R. 2030). From some portions of Oklahoma, it is more economical to ship cotton south through Galveston under the through rate to New England than it is under the all rail movement. As a general proposition, any buyer has a free entry into any market where he wants to go to buy. The port merchants buy very generally in Oklahoma. We have that competition. What we call the factorage business does not exist in Oklahoma. A good deal of (R. 2031) cotton is sold to brokers. Most of that is done in Oklahoma City. We have the privilege of shipping cotton direct for export or could concentrate at Galveston, and the port merchants could use interior concentration. Generally speaking, however, the Oklahoma merchants concentrate in Oklahoma. I do not know of any who concentrate a substantial part outside of Oklahoma (R. 2032). There are outside merchants who buy largely in Oklahoma and concentrate outside of Oklahoma. It is to the benefit of the purchasers of cotton to have it handled in the most economical way possible (R. 2033). There is no reason why a cotton classer located in Dallas, Texas, could not grade cotton

as well as a cotton classer in Oklahoma City, if they had equal experience. The mills reserve the right to determine whether our cotton comes up to the contract specifications (R. 2034). There is a very small percentage of cotton compressed in transit which moves to the eastern mills. It would be almost negligible to our business. On cotton to the eastern mills, we handle it to the Oklahoma compress, classify it, and ship it out from there; it would not be compressed in transit under the strict definition of the term (R. 2035). Cotton can be shipped to the port on a local bill of lading and there compressed to high density. The cost is about 75¢ per bale, and it is delivered [fol. 534] to the ship out of that charge. We have to pay the usual freight charges, plus the high density charge (R. 2036). I was not familiar with the complaint regarding the two rate plan until after this case was filed. I recognize that under the present rates certain firms can handle cotton at less expense and get it to shipside at less expense than we can (R. 2038). The resolution under which I am acting was introduced by Director Irby, a merchant located in Oklahoma. I don't know his connection with the firm of Harriss, Irby & Vose. It is the same name and some relationship exists. I do not know what proportion of the Oklahoma cotton crop is financed by the local Oklahoma banks. We do our banking at Muskogee; we do some at the future markets, such as New York and New Orleans (R. 2039). With the Oklahoma cotton and the Oklahoma firm, the banking is done principally in Oklahoma. I do not know about any firms that go out of Oklahoma for money. If a merchant at Galveston or Houston can get his cotton to shipside for 2 or 3¢ per 100 pounds less than I can, he has that much advantage over me in bidding for cotton in Oklahoma. We would have to meet his price (R. 2040). In the marketing of cotton, elements enter by which the merchant must shrink his profits and meet the competition depending on where the cotton is going and what the conditions are. That is general in the trade. The Oklahoma compresses are profitable, but the increase in the investment and in the facilities of the Oklahoma compresses since 1920 is rather indicative of the fact that there was not then sufficient storage facilities in Okla-

homa to take care of the Oklahoma crop. There was a very acute shortage at that time. There was rarely a section where you did not run into embargoes and find cotton sitting on railroad platforms and being damaged to [fol. 535] considerable extent (R. 2041). Warehousing is a very valuable function of the cotton merchant's business. It is also very valuable to the producer, in giving him adequate protection against the weather and lower insurance rates. For the last fifteen years, I know there has been a larger acreage of cotton planted, and a gradual increase in the quantity of cotton produced in the state, which called for increase in storage facilities (R. 2042). The farmer usually markets his cotton in the fall of the year in Oklahoma. Whether the merchant gets it then or not depends on prices. Sometimes there is quite a holding movement in the spring. I believe that one stop for concentration is all the interior merchant has in Oklahoma (R. 2043). At the present time, one concentration is serving the purpose. I have thought that a second concentration would probably be of considerable benefit (R. 2044). If the railroads were required to give the port concentrator one more free concentration than they give a man in the interior, it might be of advantage to the interior merchants who do a large business with the port merchants, and sell their cotton to them. To us it would not be of advantage (R. 2045). My organization does not represent producer. On straight specific service of shipping cotton in and shipping cotton out, concentration service will probably be a little cheaper at Houston than in Oklahoma. The Traders generally charge 15¢ per bale involving 15 days free time. Compresses in the interior attend to the payment of freight charges in and out and baling of cotton to a certain extent depending on the superintendent. If we could get our storage and concentration service cheaper than at the port we might make up for that 18¢. I think that $1.00 a bale would be a conservative estimate of the [fol. 536] profit a cotton firm makes on cotton year in and year out. Some seasons they make more and some seasons they make less, but I think $1.00 per bale would be an average (R. 2050). Therefore, a charge of (R. 2050) 18½¢ a bale all over the season would make quite a difference to a cotton merchant and would be a very controlling factor in his organization or his business.

(Mr. Enoch: It is understood that we object to all testimony in regard to the question of a charge for first concentration, or in regard to whether or not there shall be a second concentration free, or whether cotton shall move flat and compressed on one rate, on the ground that these questions are not before the Commission in this proceeding. To avoid delay we need not interpose an objection each time, but it will be understood that we make that objection.)

(Examiner Money: That will be the understanding.) (R. 2053).

[fol. 537] WITNESS H. W. MOORHOUSE

I am with the Brookmire Economic Service, Inc.; my profession is economics. My first experience began with farming in the Imperial Valley in California, where I farmed for several years. For seven years I was head of the Department of Economics and Marketing at the Oklahoma State Agricultural and Mechanical College, and for four years I was head of the Research Division of the American Farm Bureau Federation at Chicago, and since then I have been in my present position. I am in charge of the Agricultural Division of the Brookmire Economic Service. The business of that organization is to furnish reports on business and investment conditions to its clients. I have done graduate work at the University of Wisconsin and at Chicago University (R. 2054).

In Texas and Arkansas, agriculture furnishes two-thirds of the primary wealth of the state. In Oklahoma and Louisiana, agriculture supplies about one-third of the primary income. Cotton supplies approximately three-fourths of the farm income of Texas and Arkansas, and almost one-half of the farm income of Oklahoma and Louisiana. The secondary industries which have grown up to take care of the cotton industry, are tremendous. This is shown by the growth of banking (R. 2057). Cotton marketing has become more and more localized since the Civil War. The whole organization of the industry has been built upon that basis (R. 2060). This development was in the interest of the industry; the local bank has in view the broader interests of the community, and can finance the merchandising

of its cotton more intelligently than the factor. When cotton moves to port, the banks there want the business. The local banks are thus deprived of the business which is profitable to them. Cotton piles up in the Fall and must be stored (R. 2061). The logical place for the development of storage capacities is near the point of production. It is not feasible for the producer or merchant who has taken it out of the producers' hands, or the local buyer, to handle it at long range. Also, exports are not now following as rapidly after ginning as they did previously. While before the ware 70% of the cotton was exported in the five months from September to January, in recent years it has dropped [fol. 538] to about 57% for the same period (R. 2062). Europe is following the policy of hand to mouth buying which has become so prevalent in this country in all lines of industry. The responsibility for storing and carrying the product is pushed back upon the producer, and cotton handlers in this country. The theory of transportation, which we may define as good common sense, bears out the records that cotton may be taken to the port most advantageously if it is stored in the interior and carried in a more even flow to shipside. The obvious desideratum is for railroad equipment to be used during the ginning season in getting the cotton to nearby storage points where it is safe from country damage, and yet in the hands of local people who can carry through the marketing processes in an orderly way. If the movement of cars to port are more evenly distributed throughout the year, there is more likelihood of these cars moving back to interior points, filled with (R. 2063) industrial products. Furthermore, any influence which causes the cotton of a given area to lose its identity, and become merely cotton is a movement in the wrong direction (R. 2064). In my judgment it is a safer policy to encourage more localized marketing. This does not diminish the opportunity of the big operators, but does make competition by others possible. If any advantage is to be given, it should be with the interior market, where those who have participated in the production of the cotton have some chance at least of carrying the marketing process through to a conclusion. There is a growing tendency for mills to send representatives into local territories to buy direct. This is highly to be desired and can best be encouraged by expanding the interior market. The rapid ex-

tension of cotton manufacturing in the cotton states is very important, and will continue in the future. It will accentuate the need for adequate interrior markets, and the producers and the industries will profit accordingly if intertior facilities have been maintained and enlarged (R. 2066). The operation and growth of both the interior and port [fol. 539] facilities, under a transportation rate adjustment that would give advantage to neither, but allow both to compete on equal terms, would in my judgment be in the best interests of producers and of the whole industry (R. 2067). My Exhibit A-84 shows the production of cotton in each of the cotton states for the last four years, the percentage of farm income represented by cotton, the production by districts in Texas, Oklahoma, Arkansas, and Louisiana; the percentage of farm income furnished by cotton, by districts, etc. It gives information also in regard to the financing of the production and distribution of cotton, the development of banks in the cotton states, the centralization of cotton merchandizing, the trend of production, consumption, and export, the distribution of the ginning and sale by farmers, through the different months of the year, the distribution of export, through the different months of the year before and after the war, and the percentage of domestic consumption each month (R. 2075). It also shows information in regard to the production and consumption of cotton by manufacturing activities, as distributed throughout the different sections of the United States (R. 2076). It shows also information in regard to the general price level, from 1880 to date, and the different wage levels from 1907 to 1925, in addition to other information (R. 2078).

Cross-examination:

I have had no experience in the cotton merchandizing business, or in the producing business. I made certain inquiries on the ground from bankers and cotton men at Dallas and over the territory. I was in Houston one day with Mr. Griffin. I talked to no other cotton merchants at Houston or Galveston. Economy in handling is to the benefit of the [fol. 540] producer and consumer. I have not entered into the subject of costs at all. I have not studied the growth of local financing in the last six years. I have no information

as to the extent to which cotton is mortgaged prior to harvest. I have no figures on interest rates or the extent to which small interior banks finance cotton.

WITNESS HARRY WILLIAMS

I am Secretary-Treasurer of the Texas Farm Bureau Cotton Association, Dallas, Texas. I have been President of the Association two years, and Secretary one year. The Association is a co-operative association of cotton farmers, organized under the laws of the State of Texas, for the purpose of merchandising cotton produced by farmers who are members. It has been in operation for five years, and has approximately 50,000 members, who produce annually approximately 10% of the cotton grown in the State of Texas. The Association is particularly interested in obtaining the most economical distribution of cotton from the producer to the consumer, and its interest in the present case is from the standpoint of the cotton producer who pays the freight (R. 2114). The Association performs a merchandising service for the producers, and follows the general practice of concentrating its cotton at a Texas port. It has no interest in any particular port, nor in any compress or cotton warehouse. In the transportation of cotton, it is frequently desired that certain special services or special privileges be granted by the transportation company, and it is the position of our Association that wherever such a privilege or service involves any additional services by the railroad, and is of substantial value to the owner or shipper, the person [fol. 541] requiring such special service or privilege should pay a reasonable price therefor, to the end that no unnecessary burden of cost should be placed upon the industry as a whole (R. 2115). It is our position that the present adjustment on cotton in Texas is already unduly high, due to transit privileges which are granted to a part of the shippers without charge (R. 2116). Under no circumstances should the freight rate now paid by this Association be increased in any amount as a result of this investigation. We believe in the orderly marketing of cotton throughout the season (R. 2117). Our organization undertakes to market its cotton throughout the year. The farmers them-

selves do not do the marketing. We have our own group of classers and salesmen that do that for the farmer. We borrow money on our cotton in storage; that money is borrowed both from the local banks and from the reserve City Banks and also from the State Banks. We store our cotton at present at Houston (R. 2119). We have borrowed money from almost every section of the United States, and we have not had any difficulty because the cotton was not located in a warehouse where the bank was that loaned the money. This year approximately 50% of the money we borrowed was from small interior banks that offered us money for our paper (R. 2120). None of them raised any objection about the location of the cotton.

Cross-examination:

We do not use the back haul privilege, nor interior concentration (R. 2121).

[fol. 542] We sell some cotton to the southeastern mills (R. 2122). I intended to say that we do not use the back haul in the concentration of our cotton at Houston (R. 2124). We represent about 10% of the production of cotton in Texas. I believe that the other 90% of the production should have facilities by which they may orderly market their cotton (R. 2126). I believe that people that use one service should pay for it and people that use another service should pay for it. I do not know whether we use those services in going to the southeast through Houston or Galveston. We want to pay for them if we get them (R. 2127). I believe that the other 90% should be able to market their cotton without penalty to the producer.

Our plant is located at Fifth Ward in Houston: it is considerable distance from the ship's berth; I don't know how far (R. 2128). I do not know what it costs to deliver cotton from our warehouse to ship's berth (R. 2129). It seems to me reasonable to suggest that if there is a charge for second concentration, there should be a charge for first concentration (R. 2130). I do not know how the Texas farmers who are not members of the Texas Farm Bureau Association feel about a penalty for concentration in the interior (R. 2133). Eight to ninety per cent of the Farm Bureau's cotton consists of 1 to 5 bale shipments. Fifty or

sixty per cent would constitute one bale shipments. Our members ship as they gin it, and usually (R. 2136) the small farmer will not gin more than 1 bale in a single day. The members deliver their one, or two or five bales to the railroad station, and we advance them so much per bale on receipt of bill of lading in our office (R. 2137).

WITNESS T. M. EDWARDS

I am Sales Manager for the Texas Farm Bureau Cotton Association, Dallas, Texas. I have held that position four years. I have supervision of the selling of the products of the members of our Association (R. 2138). The sales of our organization are similar to that of any other cotton merchant. We sell our cotton to the highest bidder, whether [fol. 543] he be in Texas, Oklahoma, the eastern mills, or European buyers. Our method of assembling cotton, however, is a little bit different, because we have no control over the territories in which we get cotton from our members. We put out a contract to be signed by as many of the farmers as we can convince to sign it, and they may be located as various points within the state, and are located in various points in the territory. Therefore, we can not control the amount of cotton that we might get in any one territory, and it is not practicable, from that standpoint, for us to undertake to concentrate in the interior, because we might develop only ten bales at one point (R. 2139). Other merchants follow the practice at times of buying in certain territories, in order to secure a certain character of cotton for certain customers. Interior merchants in one season may buy in one section of the territory, and in another season buy in a different section (R. 2140). Some merchants specialize in certain types and grades of cotton in their purchases. As contrasted with them, our organization is not able to control the variety of types and grades we receive in any season. We take all the cotton our members raise. We sell our cotton to interior merchants, port merchants, mills in the southeast and east, buying brokers, mills in the southwest, importers in Europe and other countries (R. 2141). There is no rea-

son why we could not concentrate our cotton at some other port than Houston, if the facilities were provided for the concentration. I believe that the interior merchant has an advantage in the marketing of his cotton by reason of having an opportunity to obtain a through export bill of lading (R. 2142). It means he gets his money quicker, has a larger turnover on his capital, saves interest and demurrage. The [fol. 544] saving in interest and other advantages off-sets the 3½¢ difference in the rate, I assume, because it is placed there. I don't know whether 3½¢ or 2½¢ will take care of the additional advantage, but some figure along there will do it. We export about 60% of our cotton (R. 2144). On that part, we get our money whenever there is a port custody bill of lading signed for the cotton, and not when we ship it from the interior. The grower, or the country [fol. 545] owner of cotton can handle his cotton through the port, through various agencies, or at the interior, as he may select. I think it is practiced to some extent (R. 2145). Under the two rate plan, the shipper can ship to the port on the 80¢ rate, have the cotton compressed to high density for 75¢ per bale, and delivered to shipside out of that charge, and save 15¢ per 100 lbs. on the Ocean Rate, thereby getting to shipside for 80¢. That method can be availed of by the interior concentrator. The delivery to shipside out of the compression charge has nothing to do with railroad service. It results from competition between the compresses. If the two rate plan were done away with and the one rate should be made 83¢, it would cost the producer as much more to get to shipside as the difference between 80¢ and the rate established, 83¢, unless he could find somebody else to absorb it (R. 2148).

[fol. 546] Under the one rate plan the incentive which caused the port compresses to absorb the cost of delivering cotton from the compress to shipside would not exist. Under such plan, with the railroads absorbing the cost of drayage from the press back of the water front at Galveston, or some analogous service at Houston, the owner of the cotton would pay for the drayage to the water front, because the total cost of getting it to the water front would be paid for by him in the last analysis. In that event, it would not be necessary for the back of the water front press to absorb out of the compression charge of 75¢, the

drayage, in order to compete with the water front press (R. 2149). If one merchant could get to shipside for 80¢ and another merchant had to pay 83¢, the 80¢ would set the price of the cotton as a result of competition. The man paying 83¢ would have to absorb the difference out of his profits if he did not get other compensating services for it (R. 2150). We do not believe that the shipside on the local rate should be equalized, because the man using the through bill of lading would have an undue advantage over the men shipping on a local bill of lading, because of demurrage, etc. We could use the through bill of lading, but I do not think it is practical for all people to concentrate at the ports, or for all of them to concentrate in the interior. We believe that the cotton merchants, people like Anderson, Clayton & Co., McFadden & Co., and Charley Tarver have done more toward seeing that the farmer gets nearer the value of his cotton than any other factor up to now, and I believe that has been brought about by competition between these merchants (R. 2151). If the one rate plan is adopted and that rate is higher than 80¢ it will cost us more to get to shipside, and I do not believe there is a justification for raising the revenues of the rail-[fol. 547] roads from cotton. We want to see competition maintained on an equal basis between those who operate in the interior and those who operate at the port. We do not concentrate any cotton in the interior, and have not for the last four years. Interior concentration on a through rate is a valuable privilege to a merchant (R. 2152).

We are in favor of permitting the stoppage of cotton in the interior transit. There are men operating in the interior who, for reasons of their own business, keep their cotton stored in the interior for concentration, and they ought to have the privilege of doing that. We think that it should be given to them without any charge, so far as it is not giving them a service that gives them an undue advantage over competitors and is along the most economic lines of handling cotton (R. 2153). The concentration privilege is a special service rendered by the railroad for the cotton shippers; it is a service of appreciable value to the cotton merchants; it is of the same value that concentration at Houston would be to the merchant located there and handling his cotton at the port (R. 2154). It is my

opinion that should be charged for, any special services that are performed for them should be charged for in proportion, and that applies to any shipper. On cotton shipped through to the southeast by rail, we avail ourselves of the transit privilege offered by the railroad at Houston. If it is a service performed for us, then we should pay for it (R. 2155). The compression allowance should not exceed the savings to the carrier by virtue of the compression.

Cotton is switched on the local switching service from the Fifth Ward warehouse that we use in Houston to the shipside. When received in the warehouse at Houston, we [fol. 548] do not know what the final destination will be. It is taken through the same merchandising services that are performed at concentrating points in the interior, the same as the port merchant would utilize under the same conditions, I think. About 10% of our cotton moves out all rail to New England and the southeast (R. 2168). Sixty per cent of it is exported by ourselves. The other 40% is disposed of locally at Houston or shipped to the southeast or east. That means that 30% would be disposed of to merchants, interior merchants, or port merchants. I do not know where it goes after they get it (R. 2169).

Cross-examination:

The position of the farm bureau is that the freight rates should be based upon the actual cost of transporting the commodity via the shortest direct route, if there is nothing else involved affecting the net proceeds of the cotton to the producer (R. 2170). The rate should be based upon the shortest direct route, and should include nothing except transportation of the commodity from point of origin to destination, if that is the most economical way of moving the cotton to destination. I am not qualified to say whether or not that is the most economical method. We believe there is a reasonable out of line service that should be permitted, but what that reasonable out of line service is I would not undertake to say. Our position on the question as to whether or not there should be a charge made for [fol. 549] concentration depends on the service that is rendered the owner of the cotton in concentrating it, the question of whether or not that cotton involves a back haul, the question of the value of the concentration from the

standpoint of its final movement, and the question of the penalty on cotton passing a compress (R. 2172) where an inter-state rate applies. All unreasonable back hauls should be eliminated. The movement of cotton for the purposes of concentration and the movement of cotton for the purpose of reaching its final destination are two different things, and have a different bearing on the net proceeds back to the owner of the cotton and should be taken into consideration when the rates are made (R. 2173). I think also that the rates should be made with the view of encouraging the location of cotton mills in this State (R. 2174). It is my position and the position of the farm bureau that the rate on cotton from Gainesville to Houston should be based only upon the cost of transporting that cotton from Gainesville to Houston; that there should be taken into consideration whether that movement from Gainesville to Houston is for the purpose of concentrating for sale, or whether it is being moved through Houston for the purpose of reaching its final destination. If it is moving from Gainesville to Houston for exportation, it should move via the most direct route, and the freight rate should include only the bare cost of transportation service from Gainesville to Houston, with a reasonable profit to the carrier. I believe that is my position. I am not certain of it (R. 2176). We are not looking at this from the viewpoint of our members; we are looking at it from the viewpoint of all the farmers. It is the position of the Farm Bureau that on the movement from Gainesville to Houston for export the rate should include for the interior man some amount, we do not say it is 3½¢, in addition to the freight rate to cover the interest the interior man gets on his bill of lading that he deposits in the bank in the interior. He should pay for the additional service. The issuing of the negotiable bill of lading is an additional service (R. 2178). Furthermore, he is rendered a service by the agreement that the carrier will hold the cotton in the cars if necessary until the steamship company can receive it from the railroad. I think the average detention should determine the cost to the railroad and the charge which the shipper is to pay. It is the position of the Farm [fol. 550] Bureau that the interior man should pay the railroad for the privilege of banking his commercial paper and also for demurrage on cars if he uses them (R. 2178).

If he does not use the free time, if the car is released the day it gets to Houston, he should pay for the average use of it. The whole movement should pay for the average cost to the railroad. The man that makes the shipment and does not detain the car does not get the benefit of the average like the man who does detain the car, but he has the privilege of keeping it there for eighteen days if he so desires (R. 2179). If the privilege is exercised on the average to the extent that it will reach any figure, the freight rate ought to be based upon the privilege whether a man exercises it or not (R. 2180). The privilege should not be paid for by the man who is not using it, only to the extent that I do not think you could separate the average time allowed for demurrage and a particular shipment (R. 2181). I think the question of demurrage ought to be treated in its entirety as to the whole movement of the cotton (R. 2182). Each shipper averages 10 bales as his total shipment, and the bills of lading average about 3 bales. If we undertook to concentrate at every place where the farmers are located, we would probably have some very small lots of cotton. We might have some large lots in some places, for instance in Dallas, and that feature is not the only reason we do not concentrate in the interior. We would have our grades and staples scattered throughout the State, and it might delay the collecting of the grades and staples to market (R. 2188). I do not know that it would take us any longer in getting ready for export. I think it takes us longer to get cotton ready for shipment than if we were concentrating in the interior, but it would not be as satisfactory. I believe that we could collect 100 bales from 100 [fol. 551] different points and get them ready for shipment quicker than if we had all of those 100 bales at one point, understanding that that point to the port is not farther away than the point of origin (R. 2189). After concentration, of course, we could move it out quicker from the one point. I believe that the total movement from the point of origin could be done quicker from the interior (R. 2190). We seek the most advantageous markets when we are ready to sell, and we sell for the highest price offered. The southeastern cotton mills form a very important market for cotton from Texas, but they are not as important as some other markets. New England is an important market for Texas cotton, but

[fol. 552] not as important as some others. I have never shipped to the Japanese market through the Pacific coast. The Japanese market is a reasonably important market for Texas cotton. Also the European export market (R. 2191). It is a fact, I think, that competition in these various markets is of benefit to the producer. The producer pays all of the cost of delivery his cotton to these consuming cotton mills in all of these markets. That includes any charges whatever, including such charges as might be charged for co-centration, back haul, and out of line service (R. 2192). I think that the New England mills, competing with the southeastern mills for Texas cotton, would take into consideration in the price he would offer to meet that southeastern competition, what it would cost to lay the Texas cotton down in the southeast (R. 2194). I imagine that the total cost of the movement of cotton i staken into consideration by the mills when they go to buy it in meeting each other's competition (R. 2196). Moving cotton from Lancaster back to Abilene, about 16 miles, for the purpose of concentration or for any other purpose, is certainly less than the distance moving it from Lancaster to Houston for export, and that is not necessarily an unreasonable back haul, and I do not attempt to say what is an unreasonable back haul, and I do not admit that cotton moving from Sulphur Springs to Houston for the purpose of assembling and for sale and then moving into the southeast is a back haul (R. 2197). It is our position that we want to avail ourselves of shipping Texas cotton through Houston for assembly and shipment to the southeast, or to any market in any direction we may be able to sell it. If that movement is a burden on transportation we are willing to pay whatever it costs us as compared with some movement in some other direction. We are willing to pay for first concentration to the southeast if it is charged to the interior (R. 2200). The shipper in the interior, handling cotton for the farmers, and the shipper in the port handling for the farmers, ought to be on the same basis, so that absolute competition between the two may be maintained.

If there is no unreasonable back haul that enters into the movement for first concentration in the interior, if there is no one rate plan whereby a shipment that has passed a compress in the interior and by virtue of that fact assumes

the status of *of* an inter-state shipment (R. 2202) and be subjected to the penalty of 12¢ per 100 pounds, and this [fol. 553] service performed for the shippers by the railroads in the interior is made up for them in the aggregate in some manner, as it is now made up, or approximately so, we are willing to grant the privilege of concentration so long as it is not charged any other place on the theory that 3½¢ or 4¢ or whatever that may be fixed at will pay for the additional services that they can get in the movement on the cotton. On cotton from Texas moving to the east through the Texas ports, concentrated at Houston and going to New England, the Farm Bureau should pay for the privilege of concentrating at Houston if it is concentrated for the purpose of moving in some other direction, if not, I don't think you should. There is a certain service performed by the railroad, and if it is given in one place free it ought to be (R. 2203) given in another place free. We sell some of our cotton for concentration in Galveston, moving out of Houston. On cotton of the Farm Bureau originating at Abilene, and moving via Houston to the southeast, whether or not we should pay for the out of line service is a difficult question. It may be just as feasible from the transportation standpoint to move that cotton around through Houston as to move it direct, and I expect it would be the longest haul for the railroad originating it, the Texas & Pacific, and that would have something to do with it. I do not believe that all of these out of line services may be reasonable. I think there are some that are permissible that are unreasonable. I would not attempt to point them out, because I am not sufficiently familiar with them myself. We now store our cotton at a back from the water front facility at Houston known as the Fifth Ward Facility. We store about 80 or 90% of it there (R. 2205). We pay $1.15 per bale for the use of those facilities at Houston. Under that contract, a bale can stay in the warehouse for thirty days. After the thirty days, there is 1¢ a bale a day for storage and no further charge (R. 2206). The $1.15 includes receiving, weighing, sampling, furnishing tags, tagging, putting class tags on the cotton, marking, patching, putting the cotton to high density, and delivering it to shipside. The genearl service is concentration and delivery to shipside. The charges are not set forth indi-

vidually, the lump sum including all of the services. Deliveries are made by switching to the shipside; I believe that all of it moves over the wharf of the Houston Compress plant (R. 2207). The $1.15 includes the switching charge. [fol. 554] It does not include wharfage. I recall a conference with Mr. Fain and Mr. Tarver about storing cotton in Dallas. The Farm Bureau might have informed them that if we could profit by it we would give them some of the business. We are out for the cheapest method of handling the cotton, but we did not make any promises. I do not believe that we told them that we would give them the business if their charges were equal to those at the port, or a portion of the business (R. 2208). They were people that we know and that we like, and if we could turn them any business it would have been a pleasure to do it, but we did not want to do it at any expense to us, although the offer made may have been the same. We did not want to maintain two sets of classers, one in Houston and one in Dallas. That costs money. We compared the total cost of moving the cotton, in dollars and cents, at Houston and in Dallas (R. 2209). I think that the rate offered us by the warehouse at Dallas was about the same. The handling charge was cheaper than the one we felt we were paying if we undertake to divide up the $1.15 we pay at Houston. I think it was 25¢ a bale. I do not remember that the charge the Dallas facility offered us approximated $1.10 a bale for the same service we are getting at Houston. I do not know whether they cut their tariff in order to get our business (R. 2210). The whole objection to the one rate plan is that we believe the two movements for the interior shipper and the port shipper should be paid for on a cost basis in order (R. 2216) that their cotton selling will be on a competitive basis. We are willing for the interior man to reach the wharf on the Texas 80¢ intra-state rate. We object to the one rate being made although it would be 80¢. Our objection is based partly upon increased freight charges that the farmer would pay. It is based on the whole movement of the cotton, and we do not want to pay an increase on cotton through the port, and we do not want anybody else to (R. 2217) do it unless the railroads are not earning the amount of money on cotton that they should. We object to the one rate plan because we believe there is a special service performed for

the interior shipper who is shipping on a through bill of lading, and who gets a first concentration free; we believe that in a measure the difference between the two rates as they now exist, 83½¢ and 80¢ probably will make up that difference, and we believe that if it is removed (R. 2219) the man that is availing himself of these services in the [fol. 555] interior will be handling his cotton in its entirety cheaper than the man handling his cotton at the port and not availing himself of it; we believe that the two rate plan ought to be maintained in order that competition between these two cotton merchants may be maintained. Furthermore, as I understand it, if a one rate plan is put into effect, and any of our cotton passes a compress whether it is cheaper to pass it or not, and we export that cotton, the inter-state rate will apply to that shipment and we will be subjected to a penalty of 12¢ per 100 pounds by virtue of the cotton passing the interior compress. There should be no difference in the freight rates or privileges of the man who handles cotton for the farmer and the cotton merchant (R. 2220). The Texas Farm Bureau Association carries interest on its books as an overhead charge. I imagine that the average time consumed in getting shipments from the interior to Houston is about 10 days. The average size of those shipments when received at Houston is between 3 and 10 bales per bill of lading. We will say 3 (R. 2221). I cannot say what the average size of a shipment received in a car is, but all the cars I have ever seen were full or about full. We may get some less than that, and I expect we do. I think some of our shipments move over to what we call a mixing platform and then come to us (R. 2222). Some of our members accumulate their cotton at the gins until they get a shipment, that is, a reasonable proportion of what they expect to ship, accumulated at the gin or at their farm or some other place, and then ship it to us all at once; there are others who gin one bale and ship it to us (R. 2023). Our Association is gradually drifting to the large farmers. When the shipments of 1, 2, or 3 bale lots are placed under lading at the station, if there is no other cotton of any other member going in the same direction, the railroad has to furnish a car to send it to the compress point. I imagine if there is only 1 bale there the railroad

would get it to the compress point because they contract to do that. After being compressed at the compress point, if it does not have other cotton going to Houston to accompany it, I imagine the railroad would get it there for us in some way (R. 2224). There are a good many things that the railroads do not have to perform on that kind of shipment, and I think the rate is made on a basis of less than carload lots (R. 2225). I will not admit that the small shipments that move from the weigh stations to the compress points and are there consolidated into car loads re-[fol. 556] ceive any special service. I do not know of any special service connected with the business of the Texas Farm Bureau as it now exists (R. 2226). I think that the question of interest enters into the proceeds to the farmer for his cotton if it is a cost of getting cotton from one point to another (R. 2227). I do not believe that interest is a transportation cost in the sense that counsel has in mind. I do not say that the cost of growing and marketing cotton to the farmer is one of the criterions by which the commission should judge their transportation rates, except that it should be taken into consideration insofar as it would be most profitable to the country as a whole, that all people handling cotton are placed upon a competitive basis (R. 2228).

WITNESS J. J. MORRISSEY

I am statistician in the office of the Vice-President and General Manager of the Santa Fe at Galveston. I have held that position for about eight years (R. 2236). The [fol. 557] Exhibit introduced by Mr. Dalzell, shows the Exhibits 110, 111 and 112 introduced by me in I. C. C. Docket 11.965, and also my testimony in that case (R. 2237). (The Exhibit was objected to on the ground that it goes to the reasonableness of the compress allowance and the objection was noted.)

My testimony given there was true and correct for the purpose intended at that time in Docket 11,965 (R. 2241). The figures are correct for whatever purpose they may be used. I have not made any similar study based on costs in 1925, or the present year, or 1924. I do not think that the cost of switching at Galveston, and other points on the

Santa Fe in Texas per engine hour, during the past two years, is very much higher than previous years. I think economies have been accomplished that cut down the cost. We have been able to off-set some of the increases (R. 2043). Fuel costs have been increasing all the time, and it requires a great deal of care to off-set that. I identify Exhibit #A-85 as a copy of my testimony and Exhibit filed in I. C. C. Docket 11,962. The Exhibit is correct insofar as the purpose for which it was intended, and that purpose was to arrive at a percentage of difference, based on the selected items of cost, between the handling of flat cotton and cotton compressed in transit. The percentage of difference arrived at was 82.39% flat, over compressed in transit. It was not my object to determine the full cost of transporting flat cotton compared with compressed in transit. Had this been my purpose, I would have gone further by applying the 82.39% to the maintenance of tracks, car repairs and all other expenses which this extra service should bear. The estimate does not include anything to cover track maintenance, bridge maintenance, ties, rails, switches, interlockers. It does not provide for repairs to freight cars, or other overhead equipment expenses, Superintendents, train dispatching, station employees, station supplies, signal and interlocking operations, telegraph and telephone operation, stationery and printing, clearing wrecks, damage to property, damage to stock on right-of-way, loss and damage to freight, injury to persons, traffic or general expense, taxes, rentals and interests [fol. 558] on the value of the property, based on the (R. 2260) excess service rendered. The selected items consist only of locomotive repairs, engine house expenses, fuel, other locomotive supplies, engines, and train-men, and train supplies and expenses. The average of these expenses was $1.50 per 1,000 gross ton miles. I have prepared an Exhibit which I now offer, based on the combination of Exhibits 110 and 112, both of which are part of the Exhibit I was called upon to introduce. Exhibit 112 shows the entire cost of maintaining and operating the Gulf, Colorado and Santa Fe, per 1000 gross ton miles, during the period specified, the average being $4.99 per 1000. By substituting this $4.99 for the selected cost of $1.50, and eliminating the extra switching, the result will be 99¢ increase per bale

flat over compressed without any provision for taxes or interest on the property involved. Using the selected cost figures, to represent the entire proportion of cost, is the equivalent of using 30% of the entire expense to determine the entire cost of the service, and $1.50 is just 30% (R. 2261) of $4.99. I prepared and filed this $4.99 as a safe-guard in connection with the $1.50 selected expenses, and presented both at the same time, with a view of showing that the $1.50 did not represent the cost of the service. The application of the $4.99 is deemed conservative in view of the fact that it has been estimated that the cost of handling cotton was generally in excess of the cost of handling carload freight. The same unit of cost has been applied on the movement of both classes of cotton. I made Exhibit 110 at the request of the Traffic Department, who asked me to figure out some difference between the cost of handling compressed and uncompressed cotton. I saw the danger of figuring on that basis, that is why I filed Exhibit 112, fearing that some person not well versed in operating expenses would seize upon the selected cost expenses and confuse them with the operating expenses, and that is exactly what happened today, and I wish to state that the Exhibit which was handed me for presentation, does not reflect the true difference of cost between the transporting of flat and compressed cotton. I offer another Exhibit, which is a true copy of my testimony at Austin on September 8th, 1923, in Texas Railroad Commission Docket [fol. 559] (R. 2262) #2234. The evidence together with cross examination and rebuttal is fully and accurately reproduced in this Exhibit, and was copied from the official record under my immediate supervision (R. 2263). Cotton traffic has certain elements of expense due to the switching of it and the small loading as compared with other commodities, and also due to the export facilities and tracks. I would not use the net ton mile basis in the case of cotton, because it would eliminate train expenses. The gross ton mile is proper; that is what I used (R. 2264). As to whether the switching at Gainesville on cotton originating in Oklahoma, destined to Galveston, is a fair representation of cotton switched from local points in Texas, compressed and moving to Galveston, I will say that we have a very short switch at Gainesville; the plant there is

very compact, there is no long switching distance, and no interlocking operation (R. 2265). In Exhibit A-87, I made no calculation of the additional cost to the railroad by reason of the necessity of increased facilities to handle flat cotton at the port; it looked too big. I could not make an estimate of it. Where you handle two and one-half cars to one, you are bound to have the greatest congestion possible. It would be a problem to operate a single line of tracks; the cars would back up on the main line on passing tracks (R. 2266). I could not estimate the additional cost that would be entailed upon the carriers if all cotton was handled flat; it was too big for me (R. 2267).

WITNESS T. M. EDWARDS, RECALLED

A reasonable back haul and reasonable out of line service should be permitted under both the 80¢ and the 83½¢ rate (R. 2268). I think that the special service of concentration should be paid for in both the intra-state 80¢ rate and the inter-state 83½¢ rate (R. 2270). All special services should be paid for in some manner, but I do not mean necessarily that there should be a charge on the first concentration. The two operators should be on the same competitive basis, and if the two rate plan, the 83½¢ [fol. 560] as against the 80¢, is payment in proportion for all of the service, including concentration and the use of a through bill of lading, then that may be enough to put them on an equal basis (R. 2271). I am assuming that this service may amount to the 3½¢ they are now paying in the difference between the two rates. It is true that they have the same service now, under the 80¢ rate. They have the same concentration service and transit privileges as they do under the 83½¢ rate (R. 2272). My point is, that if they should equalize the two rates, and make them the same figure, the man that concentrates in the interior, would have an advantage over the man that concentrates at the ports, and that that advantage ought to be made up somewhere else. If you want to make it up on the first concentration, that would suit me. I don't know whether it ought to be made up there, or whether it ought not to, but I do believe that the difference between the two services should be paid for in proportion to the service. If there is no

change in the present rates, I think the present arrangement is correct (R. 2273). We do not favor Houston as against Galveston or the interior, because if our business grows as it has in the last four or five years, we are going to have to concentrate cotton in the interior, and whenever we do, if we get any privileges or special favors, we are willing to pay for them. Both the 80¢ rate and the 83½¢ rate today permit out of line service, and free concentration (R. 2274). I would not permit more out of line service in connection with the 80¢ rate, than in connection with the 83½¢. I believe it should be the same as to both rates. If there is going to be free first concentration, there should be free first concentration on the 80¢ rate, and free first concentration on the 83½¢ rate. If there should be a charge for first concentration, our position is that there should be a charge for the first concentration for the man who uses the 80¢ rate, and also for the man that uses the 83½¢ rate (R. 2275). It would not satisfy our objection to the through rate, if the export demurrage tariffs were cancelled. It does not make any difference to us who pays that. (R. 2281). I imagine that you will cut out your through [fol. 561] bills of lading if you do cancel it, because I do not think the Steamship Companies will assume the obligation, and I do not think the through bill of lading should be stopped. If the through bills of lading were cancelled, that would get rid of two of our objections in this case. I do not want the through bill of lading cancelled; we need it. I do not think that the demurrage ought to be cancelled, because that would stop the shipment of through bills of lading. I am not complaining about the through bill of lading and the demurrage. I am saying that the interior concentrator and user of the through bill of lading, has an advantage by virtue of that usage over the man that does not use it. It would not eliminate that advantage to cancel the through bill of lading and the demurrage. If they used the through bill of lading it would not (R. 2283). The rate offered to us by the Shippers' Compress and Warehouse Company at Dallas, which we will assume was $1.10, did not include shipside delivery; but we could have gotten to shipside at 80¢ by shipping on a local bill of lading; we would have had additional charges for high density compression, and if we were going to export

the cotton that would have been the logical thing to do because there is a profit in the saving of the charges on it (R. 2284). I think that the proportion of our cotton brought in on wagons to the compress points, as compared with cotton originating back from the compress point and hauled in there by rail, would be about equal to the proportion of the cotton of other people handled in the same way. The man who ships his cotton into the compress point 40 miles on the railroad, should not have to pay for the extra service over and above what is paid by the man who hauls his cotton into the compress on a wagon 40 miles, unless that 40 miles is an extra burden on the railroad or unreasonable. I do not know whether a 40 mile haul is a burden on the railroad (R. 2290).

I would say that more service is performed on the through bill of lading than on the local bill of lading for export, because the shipper can get his money on it quicker. If there is more service performed, I think the rate should be in proportion to the service performed. If, in the entire movement of the cotton, from the point of origin to its final destination, it is shown that the port man has a 3½¢ advantage, [fol. 562] or any other advantage, it ought to be removed, and if, on the other hand, it shows that the interior man has an advantage, that ought to be removed, but my position is that as it stands right now, there is no material advantage to either one. If it were not for the question of competition, I believe the Commission should not stand in the way of progress at all, and if somebody builds a warehouse on the shipside, and that is the most economic way of handling cotton, they ought to be able to handle it as cheaply as they can, just as a theory of moving cotton, but there is a good deal more than that in it to the farmer, and the owner of the cotton, and that is the fact that he wants all of the people that handle his cotton for him on a competitive basis. If I were competing with somebody personally, I would like to have 18¢ per bale advantage over him (R. 2301). I do not know whether that is quite an advantage or not, but it would be at least that much. But I do not admit that anybody has that right now. I do not contend that we are delivering cotton to the ships' berth at Houston at a transportation charge or cost to us of only 80¢ to Texas common points; we do not do that. That is all we pay the railroad; the

warehouses at the ports, in quoting us a rate, take into consideration the cost of transporting from the warehouse to the ship's berth. The competition between the warehouses, however, has gotten it down on a cheap basis, and it has inured to the benefit of the farmer (R. 2302). We handle from 200,000 to 300,000 bales of cotton at Houston annually (R. 2303). We handled 286,000 bales, I think, last year.

We handled 286,000 bales last year, 1924-1925, and about 200,000 bales the previous season, and about 80,000 bales the season before that, 1922-1923 (R. 2312). We never handle any Oklahoma, Arkansas or Louisiana cotton. We do not buy any cotton at all (R. 2313).

A movement of cotton from Sulphur Springs, or from Abilene shipped to Houston and re-shipped to Columbus, Georgia in the southeast, might be considered a reasonable out of line service, because certain railroads have routes leading through Houston that would give them the long haul on the traffic. If that movement did not unreasonably delay the delivery of the cotton to final destination, it would [fol. 563] be all right for the railroads to move it that way if they wanted to (R. 2314). What is reasonable for us would be reasonable for the other 90% of the farmers. I think generally that the principle of the railroad conserving its long haul, and meeting the competition of short routes, could be applied in the interior as well as at the ports (R. 2315). As to whether or not two different routes, from the same origin, taking cotton to a common destination, should be permitted to compete for the same cotton, I would say that the railroads ought to be permitted to handle all of the cotton it can originate in its territory, if it is not an unreasonable burden on the owner of the cotton (R. 2317). We advance a part of the value of the cotton to our members. The farmer pays interest on that amount, because we charge him back the whole cost of handling the cotton. Our insurance on the cotton is not taken care of out of the $1.15 we pay for the services at Houston.

Redirect examination:

At the time the Farm Bureau gets the bill of lading, we do not know what kind of cotton it is, and it is not available in the sales market until it has been graded and merchandised (R. 2320). Cotton which is ready for export must be

concentrated previously and merchandised in order to get it ready for export, whether it is concentrated by the railroad or somebody else. If the concentration of it involves no service by the railroad and no transit privilege, the shipper should not be made to pay the railroad anything for it (R. 2324). If cotton comes in as wagon cotton and is concentrated before it is ever offered to the railroad, there is nothing that the railroad can charge for in the way of a concentration service. If our organization ships cotton from a point north of Dallas, we would not concentrate it at Dallas. If the carriers stop that cotton at Dallas for compression, and then ship it out to Houston, that would not be a service to our organization. We would just as soon have it come to Houston flat (R. 2325), if it is economical to do that. There is a difference between stopping by the railroad for compression in order for the railroad to save [fol. 564] money, and stopping at the compress point, for the shipper, to enable him to perform a merchandising service. If the service is performed for the shipper at the point where the railroad would have stopped it, to compress it in transit, and if it is concentrated at the compress, that is a service for the shipper (R. 2326). The mills do not send men into this territory to buy cotton direct from the farmers. The shippers assemble their cotton for sale to brokers or buyers who buy directly for their mills, and they offer it to them for sale. A man may come over to this country from the mills to buy cotton, but he generally buys it from someone who has accumulated it for sale, rather than from the different farmers, on the theory that one farmer, I suppose, would not have enough cotton of a particular grade, character or staple to meet his requirements (R. 2327). The competition between the cotton merchants to sell the cotton to the mills is preponderant over the competition between the cotton mills to buy the cotton.

WITNESS W. D. FARRIS

I live at Ennis, Texas; I am a farmer. I am a member of the Texas Farm Bureau Cotton Association (R. 2332). I am Vice-President of that organization. I have served as such three years. Mr. John D. Orr, of Dallas County, a

farmer, is President of the organization. The Officers and Directors of the organization must be producers of cotton (R. 2333). The members of the organization sign an agreement to permit the Association to market their cotton, but the association does not market all of the cotton of its members, because 75 to 80 percent of the farmers have mortgaged (R. 2334). The cotton farmers in the state of Texas are all broke. Cotton is selling today as a rule, in Texas, for less than the cost of producing it. Tenant farmers are worse off now than they were ten years ago (R. 2335) A man with a two team crop must have an investment of something like $800.00 or $1,000.00. It is necessary to hire labor to do the chopping and the picking (R. 2336). There is a greater percentage of the cotton now produced under a [fol. 565] mortgage arrangement than there was ten or fifteen years ago. He usually begins the year in January without a dollar. The share-cropper is better off usually than the tenant farmer, because the landlord know- when he takes him on the farm that he has to feed him. About 70% to 75% of the farming is done in Texas by tenant farmers. About 90% of the cotton is produced on farms not owned by those who cultivate them (R. 2338). The portion of cotton produced by our members which is not marketed by our Association is very large, about 40%.

Cross-examination:

I have been farming in Texas twenty or thirty years. The increased demand for labor during the picking season, has a tendency to increase the cost to the farmer of picking the cotton (R. 2340). We have had several wet seasons that damaged the cotton. There was an agitation about 1913 or 1914 to build up country warehouses protecting the cotton from country damage. That agitation still exists (R. 2341). Interior facilities for the housing of cotton are necessary to the production of cotton. Those interior facilities should be permitted to exist and develop with equal opportunities with all other facilities. That would be beneficial to the producer of cotton. The facilities should be sufficient to handle the cotton in their particular region. At one time, that was not the fact. The farmers had no way in the world of holding their cotton, except out in the rain. We farmers think that the unusually high rate on cotton, as

compared with other stuff, contributes to the poverty of the farmer (R. 2342). It is not a fact that the tenant farmer usually has money in the fall. He hardly ever pays the landloard what he used up in the cultivation of his crop. I am familiar with the drought of last season; that is one of the recurring things that happen to the farmers throughout the cotton section. If it is not the drought in one area, it is the boll-weevil in another. I know the counties involved in the drought area last season. There was a tre-[fol. 566] mendous decrease throughout that vast area, about 750,000 bales decreased in one season, due to the drought. That affected the farmers, the compresses, and everybody in that territory.

Redirect examination:

In 1920, I lost, on my tenants, $52,000.00. In my immediate section, the farms are heavily mortgaged. The finest young men are leaving the farms and going to the City.

Recross-examination:

The tenant farmers' poverty, in my neighborhood and my county, is due to the fact that they have one crop (R. 2348). We have no record of the number of bales of cotton produced by members of our organization which were not marketed by our organization. I base my statement in regard to 40% of it on the statements of farmers as to what they produced when they joined the Association. We ask each member how much cotton he produced the previous year (R. 2350). Our records show how much cotton was marketed through our organization. Some of the members did not want to ship it to us. One of those cases is in court now. I included such cotton in my estimate of 40% (R. 2351).

WITNESS W. D. HAAS

I live at Alexandria. I have lived on the farm all my life. I am interested in the country banking business and have helped other farmers. Twenty-five or thirty years ago, the cotton business in Louisiana was such that the cotton was raised principally by large planters shipping

to commission merchants in the City of New Orleans, handled principally by cotton (R. 2353) factors. There were then no interior cotton buyers in Louisiana. Under the share crop system which resulted from the scarcity of labor [fol. 567] after the Civil War, most of the large plantations drifted into the hands of commission merchants. When the railroads began to build, the first compress was put at Alexandria. That made it possible for interior buyers to get to that territory and buy cotton. Gradually the planters and small farmers worked themselves out of the hands of the Commission merchants, due to the fact that they had better marketing at home than by shipping it to large centers and leaving it to some one else to sell for them (R. 2354). The interior buyer has done more to draw the farmer from the expenses that he had before than any other one thing that has happened. I organized a company and built a compress at Alexandria 25 or 26 years ago and the establishment of this facility for handling cotton has resulted in the growth of business *to* 25 to 30,000 bales a season. Without the compress at the interior point, the interior merchant could not do business. We have no penalty in Louisiana for passing a compress. The railroad companies pay for the compression, because they get a service that is worth very much more to them than to ship flat. Compression would only be directed at points where the business would justify it at some concentration point. I am also interested in a compress at Bunkie. Both this and the one at Alexandria lost money until the last two years (R. 2355). There is no penalty for shipping cotton flat but if he wishes it compressed in transit, the railroad pays for the compression out of the rate, because it can put three bales of cotton, after it is compressed, into the car where it originally had one. The interior warehouses and compresses are reservoirs for the early movement of the crop. If it were not for them, the ports would be congested in the first six weeks of the season. The warehouse and banking facilities at the ports are not suffi- [fol. 568] cient. The country bankers finance the large crop until (R. 2358) it is exported. I know of nothing that has been so important in helping to establish country banks throughout the cotton district in Louisiana than the compresses.

Cross-examination:

I was a cotton buyer for about 25 years, but I have not been for the last two or three years. I am in favor of some adjustment of freight rates so as to continue the existence of the interior concentrator of cotton, and compressor of cotton. Anything that would put the interior concentrator of cotton out of business would be very unfortunate for our country (R. 2361). We have had considerable trouble with the boll weevil in Louisiana, but it has not been so bad in the last two years. I would say that both the interior buyer and the port buyer contribute toward making the price for cotton that is produced in Louisiana. Frequently we have interior merchants who have offices at the ports (R. 2366). I know of no factor or any inequality which puts one at a disadvantage as contrasted to the other. The port buyer has the same advantages at the compress that the interior buyer has. Local merchants at times use both the through bill of lading and the local bill of lading. It is an advantage sometimes that an interior merchant be able to have a through bill of lading. The advantage is that the cotton goes straight through to the consumer on the other side. There may be some charges you would escape in New Orleans by having a through bill of lading (R. 2367). When I was in the cotton business, I frequently shipped cotton to buyers in Europe that would buy their cotton from me on description. I would guarantee the bale, the grade, and the weight, and it went [fol. 569] through without any handling charges anywhere else. I would not get my money any quicker on that bill of lading than I would if I sold it to a buyer in New Orleans. They would take it up just as quick. The old commission merchant was driven out by the interior buyers. The ports merchants that do any extensive interior business have their own buyers in the interior in our territory. Until this last year, possibly 80% of the cotton we handled at the compress at Alexandria was concentrated there by the merchants. This past season there has been more cotton compressed in transit than we have ever had before. That is possibly because port merchants go into the interior and ship through with privilege of compression in transit (R. 2369).

Going through the concentration service sometimes slows down the operation of the compress. You may have half a dozen buyers that order out different lots of cotton. You have got to hunt that cotton up for them by tag numbers. The Compress does that service for the buyer. If he has 500 bales, or 1,000 bales of cotton in the compress, and he wants 100 bales out, he has classed his cotton, and if it be middling grade or strict middling grade, or whatever grade it may be, it may be in different places in the compress, and it takes time to get it and range it for the compress (R. 2372). In storing cotton, we try as near as we can to give each buyer a certain space to store his cotton in that space. We can not always do that. We send a man to locate the tag number, and then the cotton is brought out on a truck. It takes a man or two to help the trucker (R. 2374). We never tier cotton. That is very expensive (R. 2375). Straight transit cotton, on which no concentration service is to be performed, is unloaded, pressed and reloaded; we can operate with the track on one side for un- [fol. 570] loading, and on the other side for re-loading if we are not congested. We have to remove the cotton in blocks of 75 bales or more when we load it out (R. 2376). There is more labor service involved in handling cotton for concentration than there is in simply handling cotton for transit. All concentrated cotton has to be weighed, put on the yard, and classed by the buyer's own classer. The [fol. 571] buyer has it marked under the mark that he wants that particular grade of cotton (R. 2377), and then we put it back in the compress for him and as he calls for it is brought out again. It is a common practice for the employees of the compress, to draw the samples, tag the samples, and mail them to the merchants who may live elsewhere. We make a separate charge for that (R. 2378). Compresses in the interior generally, handle cotton pretty much the same way as we do (R. 2379). We pay the truckers $3.50 for a 10 hour day, double time when we work at night and we have a good deal of overtime during the first six or eight weeks of every season. The overtime work is not due to the extra handling we have to do when we are arranging the cotton to be sampled, and taking it back to the warehouse. It is due more particularly to the fact that the cotton moves very fast in the first two months of the

season (R. 2381). We do not have to handle strictly transit cotton ahead of the other cotton and there is no demurrage on strictly transit cotton. We have congestion at the beginning of every season, and frequently we have had embargoes. If we were handling only transit cotton, we could handle that easier than if we were also handling concentrated cotton, and with greater speed. We could handle either kind by itself to better advantage than we can handle two different kinds of cotton. The railroads in the last few years have required that a bale that is concentrated in transit should be marked for identification purposes. There is a mark on both sides of the bale. My own opinion is that it is a big mistake. I know that it does (R. 2385) no good to the buyer of the cotton. On the contrary it is a nuisance to him. A compress crew under normal conditions would be 35 or 40 men, but last year, on account of the congestion we had as many as 70 men on the payroll (R. 2389). I have never made any study to undertake to see what our labor cost would be where we were doing nothing but compressing cotton in transit. The operation of our press has not been a paying investment. The last two seasons were about the first seasons that we have shown anything over expenses (R. 2396) since the boll-weevil came in that country. I believe we charge 50¢ a bale for con- [fol. 572] centration for the first 30 days. If he does not compress his cotton there, we charge him just the same as if he has it compressed. I think it is understood at every compress in the South that cotton that comes into the compress is to be compressed. If he ships it out flat, he pays for the compression whether he got it or not (R. 2397). We keep the crew, we have the labor, and we are prepared to compress it, and we can not afford to take up our space with cotton that is not being compressed. It may be that warehouse people, who have not the investment in compresses and steam equipment, and in all the other equipment necessary to handle the cotton, might be able to store cotton at the concentration charge. They would not have to have a big crew of labor there in order to handle the business. If we were doing a warehouse business, we could have very much less labor than if we were doing a compress business (R. 2400). There is no concentration of cotton in any town that I know of now that has not a com-

press. None of the cotton that comes to our warehouse is compressed before it gets to us. I have heard of cotton being stopped at some other points for concentration that had been already pressed, but I don't know whether that ever happens in Louisiana. I would say that more than half of our labor cost is incurred in concentrating cotton; it takes more labor to handle concentrated cotton that it does transit cotton. I would not say that concentration makes a large amount of difference in our labor costs, but it does make a difference. If we handle transit cotton, we could possibly handle it with less labor than we do where we handle both (R. 2403) concentrated and transit cotton. The customary practice in Louisiana is that cotton can be moved to the nearest compress in either direction. Alexandria, Shreveport and Monroe compresses compete with Opelousas in the territory between Opelousas and Alex- [fol. 573] andria by getting a back haul (R. 2415). I understand that certain interests are contemplating building another compress in Alexandria. I understand it is to be a high density press. If the charge of 25¢ per 100 pounds is made for putting cotton to high density there, 18¢ of which the railroads will absorb out of the rate, the shipper will get his cotton to high density by paying 7¢ per 100 lbs., and since he can save 15¢ per 100 lbs. on the Ocean rate, thereby, there would be a net saving to him of [fol. 574] 8¢ per 100 lbs.; as a result, we might find it necessary to install high density compress in our own plant (R. 2416). I am not familiar with the recent development of waterside facilities at the port within the last two or three years. I have never operated a high density compress, but I have seen several of them in operation. I should say that roughly speaking the depreciation on machinery and building of a compress would be 10% (R. 2417).

WITNESS S. E. HOUSTON

I am Traffic Manager for the Texas Farm Bureau Cotton Association, Dallas, Texas (R. 2422). I have held that position about three years. Prior to that I have had 15 years in the traffic department of various railroads, and two

years Traffic Department of the Southern Cotton Company. The railroads I worked for are southwestern railroads. I am acquainted in a general way with the cotton rate structure in Texas.

(Exhibit A-88, showing the scale of rates on cotton applicable in Texas as contrasted with scales of rates applicable on various other commodities in the same territory, was admitted subject to the objection of counsel that the reasonableness of the rates was not involved in this proceeding.)

Practically the entire Texas Cotton Crop moves out through Texas ports and New Orleans. There is a substantial movement of cotton to the southeastern states by all rail; and a very small rail movement to other points, but these would only constitute a small percentage of the total. I have compared the rates shown in this Exhibit on cotton in Texas common point territory with the rates on all other commodities shown in Texas Lines Tariff #2-1, A. C. Fonda's I. C. C. 174, which is the general class and commodity tariff applicable in the state of Texas. The commodity rates are representative of the general commodity movement in the state of Texas (R. 2429).

[fol. 575] The comparison is shown for the following distances, 20, 35, 50, 75, 100 and up to 211 miles. The cotton rates are on a mileage scale basis, reaching the maximum rate of 80¢ per 100 lbs. at 211 miles, and this rate applies throughout the Texas common point territory. There are various other commodity scales shown in the Exhibit, *with* reach a maximum rate at certain distances. I have, therefore, shown the distance at which the maximum rate is reached, and the maximum rate for such distance. I have not shown the rate applicable in Texas differential territory in which there would be a differential added to the cotton rate, and also to most of the commodities rates shown in the Exhibit. I have shown the minimum weight in the case of all the carload commodity rates. Cotton is general- transported in carload quantities (R. 2431). Page 2 shows that the rate on cotton for 75 miles is 50¢ per 100 lbs., while on fourth class merchandise freight in less than carload lots, the rate is 40¢ per 100 lbs. Fourth class embraces a large

line of general merchandise such as shipped by wholesale grocery houses and hardware jobbers, and includes many high grade commodities. The single line rate at 211 miles on fourth class rate, would be 73½¢ per 100 lbs. or 6½¢ less than the rate on cotton (R. 2431). Page 3 shows that petroleum products are transported on rates which are approximately one-half of the cotton rates for all distances. Page 7 shows the tremendous difference which exists between the rates on cotton and on various high grade commodities (R. 2432). The Texas Farm Bureau Association sends instructions to all of its members to have their cotton shipped to be compressed in transit, unless the tariff rate from the point of origin to destination shows a lower rate if shipped through uncompressed. Houston is our main concentration point, and we have to have it compressed there, usually to high density. It costs no more to have flat cotton compressed to high density than it does to have standard cotton compressed to high density. We could ship our cotton through flat from all points in Texas without any additional cost, but we have never followed this practice because we felt that *that* in most cases the carriers would prefer to compress the cotton in transit, except for [fol. 576] a short haul, and since the carriers absorb all the cost of compression, we prefer to patronize the interior compresses. In addition to this, if we should ship our cotton through flat, passing the compress, and should thereafter (R. 2435) re-ship the cotton from Houston to some Mill point via rail from Houston, we would be penalized 12¢ per 100 lbs. for passing a compress. This penalty, under the present rate of adjustment, is not a severe factor for the reason that we have the privilege of substituting cotton at the transit point, and would usually be able to apply billing against the outbound shipments on inbound cotton which had been stocked at the interior compress. If the intra-state tariff provision be made the same as the inter-state, we would, of course, undergo a penalty where the cotton passes a compress We believe the Texas State Tariff Provision under which cotton may be shipped through flat or compressed in transit, is best for everybody concerned, for the reason that we have the power to ship our cotton past a compress in the event the compress does not render us the proper service (R. 2436). We do not find

it necessary to rush the cotton through or make claims for delay, because no sales are completed on our cotton until after it reaches its destination at Houston. During the past season, we have made no claims for damage while in transit, and only a few last year. We have never insisted on the railroads shipping our cotton as soon as the bill of lading is issued, but to the contrary we ordinarily leave the movement of the cotton up to the carriers, so that the cotton may accumulate in lots, and in like manner, they are permitted to accumulate it out of the compress, and thereby enable them to handle it with heavier loading (R. 2437). Sometimes the carrier may make several bills of lading for one shipment of cotton by one of our members. We do not request that. It is just the ignorance of the railroad agent. We do not require the carrier to make out an expense bill for each particular shipment. I have been trying for three years to get the carriers to use a system that will save all that double work, and I have convinced most of them that that should be done, but there are still one or two of them that would rather do it the old way. We [fol. 577] have undertaken to get them to use a system by which the expense bill would cover all the shipments from a given point at a given time. In shipments into the concentrating point at Houston, we never call for any out of line or back haul service (R. 2440). On shipments to the southeast, the cotton is concentrated at Houston and we take a transit privilege. The rate is adjusted to the through rate from the point of origin in Texas to the southeastern mills. In such case it would make no difference whether the rate to Houston was 80¢ or 83¢ from Texas common points. If a charge is made for the transit privilege, in all cases where the transit privilege is used, we would, of course, be charged the same amount as everybody else and have no cause for complaint. It may be stated that from 80% to 90% of the Texas territory, a logical route to the southeast would lie through Houston (R. 2441). For example: shipments originating on the M. K. & T. line, Santa Fe line, G. H. & S. A., H. & T. C., T. & B. V., F. W. & D. C., as well as many other lines, would logically run through Houston. Shipments to the southeast originating on the I. & G. N. would naturally be routed through Houston in order that its affiliated lines, the Gulf Coast lines, would

get the long haul to the Mississippi River. The same would also apply to the Southern Pacific The Texas carriers generally have vigorously petitioned the Interstate Commerce Commission to permit them to apply routes on Texas and Oklahoma traffic generally through Houston and other Texas gateways, including Galveston. This was the subject of extended hearings recently before the Interstate Commerce Commission, Fourth Section, order 464 et al., in which the carriers filed brief citing the testimony of this association in support of these routes There is a tariff provision whereby cotton originating on all points on the T. & P. may be routed through Houston via the I. & G. N. to the southeast; the tariff reference is Item 1121 Supplement 40, S. W. Lines Tariff, 430, Leland's I. C. C. 1597, effective June 19th, 1925 (R. 2442). The mileage from Abilene to Columbus, Ga., via T. & P., New Orleans and Southern Railway beyond, is 1327 miles. The mileage from Abilene to Ballinger via the A. & S., Ballinger to Houston via the G. C. & S. F., Houston to New Orleans via the Gulf Coast [fol. 578] Lines, New Orleans to Columbus via the Southern Railway, is 1,445 miles (R. 2443). I think both of these routes are logical and very reasonable. There is no greater relative difference in the distance than that of the mileage from Dallas to Houston via the Southern Pacific as against the Missouri, Kansas & Texas and Santa Fe. The Houston and Texas Central mileage is 255½ miles. The mileage by the M. K. & T. is 338-8/10 miles; via the G. C. & S. F., 365-3/10 miles (R. 2444).

Where cotton moves out to an inter-state point, we are required to comply with the provisions of the inter-state tariffs, which provide that where cotton moves in uncompressed bales through a compress point, the rate will be 12¢ per 100 lbs. higher than the rate applicable where it is stopped by the railroad for compression at such points. It is provided (R. 2445) in item 6-B, of Supplement #12 to A. C. Fonda's I. C. C. 166, Texas Louisiana Lines Tariff #50, and in Item 6-E of F. A. Leland's Tariff, I. C. C. 1597, Supplement 40 (being Southwestern Lines Tariff #43-0). In addition to the penalty for passing the first compress point in line of transit, the shipper will have to pay and bear the cost of compression, which is 18¢ per 100 lbs. at interior compress points. The tariff on that is Item 6-B,

Supplement 12 to A. C. Fonda's I. C. C. 166, Item #6-E, Southwestern Lines Tariff #43-0, F. A. Leland's I. C. C. 1597 (R. 2446). To illustrate: if a shipment of cotton originates at a point north of Italy, Texas, which is a compress point on the International Great Northern Railroad, 213 miles from Houston, and is compressed in transit at Italy, the rate will be 80¢ per 100 lbs., which will include the entire cost of compression, amounting to 18¢ per 100 lbs. If we desire to ship this cotton past Italy to Waco to be compressed, Waco being the next compress point, 28 miles south of Italy (R. 2446). We would have to pay 92¢ per 100 lbs. plus 18¢ per 100 pounds for the compression at Waco. If we ship it through uncompressed from point of origin to Houston, we would pay 92¢ per 100 lbs., and would make our own arrangements for compression at Houston, where it would be compressed at our own expense. We have no preference to have cotton compressed at any point other [fol. 579] than Houston, but we would like the privilege of having it passed where we desire, on account of many things. We do not want to be at the mercy of one particular compress (R. 2447). If we ask to pass the compress, we would be willing to pay for the compression. We do not need the right of election any more than the Oklahoma man, but we both need it, badly (R. 2448). Shipments from Crockett, Texas, and from Mumford, Texas, respectively, each 113 miles distant from Houston, illustrates the fact that we would be compelled to pay much higher transportation charges for cotton for the same service by the same railroad in a case where the cotton did not pass a compress in coming from one point, and did pass a compress in coming from the other. Practically all of our cotton is compressed to high density at Houston and it is of no advantage to us to have it compressed to standard density (R. 2452). In regard to the movement of flat cotton in private cars, the Western Weighing and Inspection Bureau issued a circular to all railroad agents, in regard to the loading of flat cotton at country stations for compress, requiring that the maximum capacity of the car be utilized, and that 50 bales for the standard 36 foot cars must be secured if possible. The rule specifies that in localities where the car supply is inadequate, roads should utilize local merchandise cars moving to compress points; and that cotton under one bill of

lading should not be loaded in two cars, when one car will take the entire shipment, and the agent should urge the shipper to accept bill of lading for amounts that can be loaded into one car (R. 2454). It is only in the event that there should be a one rate plan, that I think there should be any change made with regard to the 12¢ penalty for passing compresses.

Cross-examination:

We are using the intra-state rate that has no penalty. The interior concentrator is at liberty to use the same rate, if he cares to. Our cotton is handled in a similar manner to any cotton that is concentrated in the interior. If the railroads see fit to throw one bale in a car, and have a special engine and crew to handle that, it is up to them, but we do not require it. I know that it is a fact that they [fol. 580] accumulate our cotton at the compress point until they get sufficient quantity to move it (R. 2457). My statement is that the railroads assemble the Farmers Bureau Cotton on their country station in sufficient quantities that they thought they wanted to haul to the compress point. They might want to haul one bale in a merchandise car (R. 2459). If they want to accumulate it, we have no objection, and we have never required them to handle our cotton only just as the bill of lading is signed. We do not require them to handle our cotton separately in the car (R. 2460). The railroads accumulate the cotton at their country stations until they get sufficient quantity to handle it into the compress; they accumulate it on the property of the railroad. We do not ask them to; they are doing that for their own convenience (R. 2461). They have sometimes held it there quite a long time on the station platform (R. 2462). I have a pretty good understanding about the general method of handling cotton; I have been handling it long enough. Our cotton moves into the compress in just about the same lots as any other cotton that was going to be concentrated at the interior points.

The 12¢ penalty for passing the compress in the event the one rate plan went in, it would be a serious disadvantage to us in marketing the cotton (R. 2463). As to whether the fact that we now avoid that under the state rate is an advantage to us, and a disadvantage to the user of the inter-

state rate, I would say that he does not have to use the inter-state rate. He can use the same rate we use if he cares to, but for certain reasons of his own, if he wants to use the other rate, he is subject to that penalty. He can handle it on a local bill of lading just as we do, and avoid that disadvantage. We are doing that at the present time. If the one rate plan went into effect, in the event we filed a concentration claim to an interstate destination, on an export shipment, the carriers will assess the inter-state rate instead of the state rate (R. 2464). If one of our members tendered the railroad one bale of cotton on one bill of lading, the railroad would be required to give him a bill of lading on that one bale to move to Houston. Cotton is an any quantity commodity (R. 2465). I think the route from Abilene through Houston to Columbus, Geor- [fol. 581] gia, and the route of the T. & P. through New Orleans to Columbus, Ga., are reasonable routes, and that the out of line service involved is a reasonable out of line service. These routes are not representative of what the Farm Bureau means when they say there should be no out of line service. I think the carrier has the privilege to meet the competition of another one if they see fit to do it. We do not wish to restrict them. We certainly want them to do it. On cotton moving from Paris, Texas, to Houston, if the Texas & Pacific and I. & G. N. want to handle that cotton through Ft. Worth in competition with the Texas Midland and Southern Pacific, that is agreeable to us, and would be beneficial to us in so far as having more available routes open is beneficial. If the direct route of the Texas Midland and Southern Pacific permit concentration, the same service should obtain on the competitive route. When we sell cotton at Houston, we sell the freight bills with the cotton, because the Houston market, as I understand it, is based on the rate from the interior, and he is entitled to the inbound expense bills (R. 2467). He does not need the freight bill to find out what the freight charges are; he needs it to get his concentration back if he re-ships (R. 2468). If a charge was added to that freight bill for concentration at Houston, I do not know whether the farmer would have that deducted from the price of his cotton or not. I do not know that the price paid to the Farm Bureau is less the freight shown on that

freight bill; I do not know a thing about selling cotton (R. 2469). I am not in favor of a higher penalty for first concentration at Houston than at interior first compress points, where the same amount of service is involved. I think everything ought to be equal where the same amount of service is performed (R. 2470). For the shipper, I [fol. 582] think the same amount of service would be performed in each case (R. 2471). There is a switching service and unloading service performed from our plant in Houston to the ship's berth. The compress people do the unloading and represent the railroads in doing it. We get 1¢ per 100 lbs. back unloading where it is performed by the compress. The compress performs the unloading service at the docks, and I presume they act as agent for the railroad. I understand that the charge that we pay the Houston Compress Company for handling our cotton at [fol. 583] the Houston Compress, and the delivery to ship's berth, has included in it this transportation cost. I suppose we are paying about 83½¢ per 100 lbs. to get the cotton to ship's berth. On a shipment of flat cotton, originating at a point 125 miles from Houston and moving to Houston, that cotton is delivered to the ship's berth at Houston, and we would pay 68¢ per 100 lbs (R. 2474). We would pay an additional transportation charge, approximating 3½¢ per 100 lbs. to get it to the ship's berth. If the one rate plan is put into effect, and the 68¢ rate is increased to 70¢ intra-state rate, we would pay 70¢ and the cost of getting to the ship's berth would not be charged (R. 2475). If the one rate plan went into effect, we would be paying the 12¢ penalty or assuming the cost of getting the cotton to shipside. We would handle it in the most economical way; we would pay the intra-state rate and the cost of getting it to shipside, if that were the cheaper. Practically every bale of our cotton is compressed to high density.

[fol. 584] We sell that to southeastern mills or New England mills. The railroad rate on high density cotton is the same as on standard density cotton. I presume that the reason we high density cotton at Houston when going to domestic mills is *the* because of our contract with the Houston Compress Company (R. 2476). I do not know of any other reason why a man should have his cotton put to high

density except to make a saving in the ocean rate. I have had no experience in billing freight at point of origin and making expense bills at point of origin or destination (R. 2477). In the handling of our cotton from the country points, I suppose the railroad puts on a separate bill of lading lots for a number of shippers on one way-bill and that they have to put on that way-bill reference to each bill of lading lot, the name of the shipper, the marks on the cotton, and the tag number. At destination they do not put the shipper's name and all of that; they can keep a proper record without doing that. The expense bill is really only a receipt to a man for his freight charge (R. 2478). I think the rates should be the same on cotton that is compressed in transit at the first compress in line of route and on cotton compressed at some other compress in the line of route, having passed one or more compresses. I think it should be the same because if the one rate plan goes into effect, the 12¢ penalty would apply if it passed a compress point (R. 2480). We want the privilege of passing a compress when they do not lend us proper service. On an intra-state shipment, under the present intra-state tariff of the Railroad Commission of Texas, if the shipper directs that his shipment be made flat passing a compress, the shipper than has to bear the cost of the compression, but he does not have to bear the 12¢ penalty (R. 2483). On a shipment of cotton originating in Dallas and delivered to Kempner's plant in Galveston, unloaded, taken possession of, and later redelivered to the carrier for movement from Pier 10, the railroad service is a little greater than on a shipment of cotton originating at Dallas, Texas and moved direct to Pier 10. Kempner would have one extra switching, he would have to put a car in to get the shipment; he would have to take the car away from the wharf. On a straight shipment he gets 48 hours inbound. When he takes it out to the wharf, I suppose he gets more free time. There would be some interruption in the service in handling the cotton through Kempner's plant (R. 2485). On [fol. 585] two shipments originating north of Dallas, one concentrated in Dallas and the other shipped direct to Kempner's plant at Galveston, the railroad service is about the same (R. 2486). There would be no difference in the service rendered by the carrier at Dallas on cotton com-

pressed in Dallas and on cotton concentrated in Dallas, insofar as the carrier is concerned, but the shipper would be getting the privilege of concentration. All of the cotton we receive at Houston is entitled to first concentration, and we would not be subject to the so-called second concentration penalty, on all of it.

The substance of the testimony of witnesses C. H. Brillhart and Harry L. Oppenheimer, who testified at this point, deals with the issue of compression, which has not been attacked in these proceedings, and therefore is not narrated here.

WITNESS L. M. SHEPARDSON

I am Traffic Manager of the Nueces County (R. 2605) Navigation District No. 1, Corpus Christi, Texas. I am appearing in behalf of Nueces County Navigation District No. 1, which is building and will operate the port of Corpus Christi, Texas. The port of Corpus Christi will be ready for operation on or about September 1, 1926; it is a major port with a major channel depth of 25 feet, a turning basin depth of 30 feet, equipped with warehouses and all the necessary facilities for the operation of a first grade port. There is at Corpus Christi at the present time one high density compress. There is also 16 miles from Corpus Christi at Robstown, a compress; another at Taft, 18 miles from Corpus Christi, and another at Sinton, Texas, approximately 29 miles from Corpus Christi. We are located in the heart of probably the best cotton producing territory in the United States, and I do not know of another port which has such a large quantity of cotton immediately contiguous. There would be approximately 200,000 bales in easy trucking distance of the port in a normal year (R. 2607). We desire that whatever adjustments are made for any of the other ports, particularly Houston and Galveston, be likewise applied to Corpus Christi. We have no quarrel with either the one rate or the two rate plan. The Texas common point rate applies to Corpus Christi. As a general rule, the Galveston rate has been and is being applied

[fol. 586] in the new adjustment to and from Corpus Christi; no definite action has been taken on Louisiana and Arkansas. Corpus Christi is 224 miles directly south of Houston (R. 2608). The high density compress at Corpus Christi is about 2½ miles from the turning basin, but we have applications pending now from three different companies for the erection of very large shipside compresses. Warehouses are to be constructed in connection with them. Our present warehouses on the turning basin, which can be used, are 1224 feet long and 160 feet wide, provided with fire walls every 306 feet, giving us practically four warehouses 300 feet by 160 feet (R. 2609). The compresses which are in contemplation will go on the north side of the turning basin, while our own facilities are on the south side of the turning basin. Exhibit No. 97 outlines the district under the jurisdiction of the Nueces County Navigation District No. 1, and also shows the location of Taft, Sinton, Robstown and Corpus Christi. The channel from Aransas Pass to the turning basin at Corpus Christi is approximately 21 miles long, being through the open waters of Corpus Christi Bay (R. 2610). Exhibit A-98 outlines the local facilities of the port of Corpus Christi, showing that the turning basin is 3,000 feet long by 1,000 feet wide, and 30 feet deep. There is ample room for the construction of very large warehouses or industries of all kinds on the property owned and controlled by the Navigation Commission. The scale on Exhibit A-98 should be one-half inch to 325 feet.

Cross-examination:

The press already in existence at Corpus Christi is about 2½ miles from the water front, and cotton is transported from it to the ships by the rails of the St. Louis, Brownsville & Mexico, Texas-Mexican, and San Antonio & Aransas Pass. Dray service is possible and will be provided also. The charge for the railroad service, in my opinion, will be approximately $8.00, direct switching from the warehouse to the dock (R. 2612). I get that estimate from the local-State or intra-city switching. Application has been pending for space on the turning basin, which would make the compresses water-side compresses; and we feel that Corpus Christi is confronted with the problem

of having back from the water front compresses and water front compresses (R. 2613). We anticipate making Corpus Christi a concentrating center (R. 2614). If we should pass [fol. 587] a compress at Robstown, 16 miles west of Corpus Christi, and come into Corpus Christi, the cotton would be compressed at Corpus Christi, plus the additional charge for passing the press. That additional charge would be of such volume that we would lose the allowance from that compress to water-side. Consequently, we would not have a one rate plan under the present adjustment. If the owner of the cotton could save that 12¢ penalty, it seems that it would be economy to him to stop the cotton for compression at Robstown (R. 2616). I don't think there would be any saving of time in stopping at Robstown, Taft, or Sinton for compression. We could not get any cotton into Corpus Christi without passing Robstown, Taft, or Sinton, unless it came in over the San Antonio, Uvalde & Gulf. If Houston and Galveston can operate under a one rate plan, I believe we can (R. 2617). From conversations I have had with various cotton men in that section, I have formed the opinion that they would much prefer the rate situation to remain as it is. I do not know whether or not there is a penalty for passing a compress where the rate does not include any part of the compression. Most of the cotton coming past those compresses at Sinton, Robstown and Taft, would originate in a territory where the rate itself would not include the cost of compression (R. 2618).

WITNESS GEORGE S. PECOT

I am Travelling Cotton Inspector for the Western Weighing and Inspection Bureau, Dallas, Texas, and have been in that service 12 years. I am acquainted in a general way with the handling of cotton at country points and at compress points and its delivery at the ports.

My Exhibit No. A-104 shows the loading of straight car loads of concentrated cotton at interior points and the loading of straight carloads of transit cotton at interior compressing and concentrating points during the months of September, October, and November, 1924 (R. 2642). The Exhibit covers 40 compress points, scattered in various sec-

tions of the State, covering movements or comparative movements of all sections of the State. It shows that the average loading of straight cars of concentrated cotton is 72 bales per car. In that computation, there is included the compressed cotton that originated at compress points. That is what is known as city compression. Under the heading "Transit Cotton," that is cotton moving into the [fol. 588] press by rail and moving on to its final destination after being compressed (R. 2643). There is included none of the cotton that is included in concentrated cotton. Under the head of "Transit Cotton," I have shown cotton that originated at interior country points and moved through to the ports compressed in transit (R. 2645). Under the heading "Concentrated Cotton," I have taken the cotton that moves to the compress points on bill of lading to the compress, as well as cotton that originated at the compress point. Some of it is railroad concentrated and some of it is wagon concentrated or city cotton. It did not stop in transit for merchandising at some other point; only going to the ports. The term "Concentrated Cotton" means only the cotton that moved into the compress, was there merchandised, and was moved from there to port (R. 2646). This includes only cotton from Texas and only cotton that moved to the port.

A mixed platform at Houston or Galveston is probably what the railroads use to segregate cotton where the car contains two or more shippers' cotton (R. 2648). After cotton is handled over the mixed platform, in some cases it is delivered by dray. In the majority of cases it is handled by rail; the car is unloaded and then re-loaded with the cotton belonging to any one concentration point where there are two or more consignees cotton going. If we have two shippers' cotton in this car, the car is unloaded, we put one shipper's cotton in this car and if there should happen to be on the mixed platform some more cotton from another point for that same shipper, that cotton is put in the same car and hauled into the compress (R. 2649). The general average loading of the class of cotton shown by the exhibit is 67 bales. The total number cars required to transport all of the cotton shown on the exhibit is 15,386 cars.

My Exhibit No. A-105 shows the loading of flat cotton at the country stations in Texas which moved into the com-

press points shown on Exhibit No. A-104. The reference mark shown on Exhibit No. A-104, for instance, on the third to the last item on the right hand page (R. 2650) means plus, that being the nearest symbol to a plus mark on the [fol. 589] typewriter. Exhibit A-105 shows that the number of cars required to transport the number of bales shown on the exhibit was 37,998 cars. Both exhibits show the number of bales. Both cover the same period of inbound and outbound movement. The average loading of inbound flat cotton to the compresses is shown to be 27 bales per car (R. 2651).

Cross-examination:

The average outbound loading on concentrated cotton per car was 72 bales, on transit cotton was 63 bales. If the car of cotton comes to Houston, transit cotton, with a lot in it for the Houston Compress Company or the Long Reach plant, some cotton for Alexander-Sprunt, some cotton for the Turning Basin Compress, and some for the Magnolia Compress up town, it comes into the breaking-up yard first, and goes through all of the switching service that a car would go through if it were going direct to a facility in Houston. Then we place it at the mixed platform. The railroad assumes all of the labor cost of unloading the car (R. 2652). It assumes all the clerical and all other costs of sorting the cotton out on the mixed platform. It assumes the cost of re-loading into the cars and switching to those facilities. In making that switching service from the mixed platform to the various facilities, we do not concentrate it there in a few bale lots before we switch; we try to get rid of it as fast as we can at the mixed platform, because the movement is so very rapid that unless we do use every effort to get it out promptly, the platform would be badly congested. The number of bales in an average car would depend upon the amount of cotton that we happen to have on hand for any particular points or any particular facilities (R. 2653). We might switch cars to turning basin with ten or fifteen bales in them. That would be true as to the other facilities (R. 2654). That cotton is handled at Galveston for the various consignees by a switch movement and by dray, principally by dray. It is a fact that the concentrated cotton from the interior largely goes to facilities

other than the facilities of the carrier, and we save all of this expense in connection with the interior concentrated cotton. I have been engaged in the study and handling of the cotton situation during the whole 12 years I have been connected with the Western Weighing and Inspection Bureau. My regular assigned territory is everything north of Waco as far as St. Augustine southeast and as far as Amarillo, but I do have occasion to visit other parts of the [fol. 590] State in connection with my line of work (R. 2655). I have spent a good deal of time at the ports, checking shipments, checking the records of our office at the ports, endeavoring to locate shortages or make a proper application of any way-bills that might be on hand. My duties at the ports are to assist the Chief Inspector whenever I am in the ports, go with him in the handling of the cotton, general supervision. I am the direct representative of the District Manager of the Texas territory. My headquarters are at Dallas (R. 2656). At the interior compress points, we check the cotton out of the cars, that is, cotton moving to the ports, for the number of bales and the condition of the cotton, marks, and destination, in order to furnish that information to the agent that he may secure the proper billing if it is in transit cotton, and that he may issue the proper bill of lading if it is in transit cotton out. During the cotton season, we maintain a representative at all of the principal compress points in this State. There is no difference in the checking and service that we perform with respect to the cotton coming in to be compressed in transit under through bill of lading and cotton which is coming in consigned locally to the compress points (R. 2657). In the case of cotton that originates at the compress points, brought in by wagon, we do not have anything to do with it until it is tendered to the carrier for outbound movement. The compresses receive it from the wagon, or the cotton yards, it is put on their platform and checked by their representative for the number of bales in accordance with the shipping order that the shipper has furnished them for this particular lot of cotton. It is compressed before it goes into the car, in most instances. There is some cotton that moves from the compress in its flat state, at the shipper's desire. The latter would be very small in comparison to the compressed cotton (R. 2653). If such cotton is mov-

ing to a Texas point final destination Houston or Galveston, we will say, and the shipper wants his bill of lading before compression, then we do issue an inspection of his cotton, as to its condition, provided it is handled in the proper way, that is, marked and so forth, we issue a certificate to the agent in order that he may sign the bill of lading for the party owning the cotton, but if he does not want the bill of lading before it is compressed we have nothing to do with it until it is compressed and tendered to the carrier. If [fol. 591] cotton moves in by rail to the compress points in a damaged condition, if it is transit cotton we notify the compress that it must not be conditioned without authority of the officials of the line interests. If it is compression cotton we give no instructions to the compress at all. The compress handles it with the owner of the cotton. In the case of compressed cotton, they receive it for the owner, and act for the owner (R. 2659). In the case of transit cotton, they are acting as the agent of the carrier. When the carrier authorizes that cotton to be re-conditioned, the compress is not paid by the carrier for that service. I do not know whether they receive any pay for it or not (R. 2660). The railroads do not like to give authority to re-condition on any transit cotton. If the shipper or the owner of the cotton makes a request that it be re-conditioned, the carriers in all probability will grant the request, but they are becoming more strict on that recently. I presume the shipper pays for it if it is paid for. I cannot say that the carriers never pay for it, but if they did I don't know anything about it (R. 2661). The carriers could not damage the cotton to any very great extent. In the case of a fire, the carrier would take charge of that cotton and have it salvaged. In the case of transit cotton moving in, we check the cotton as to the number of bales and the marks in accordance with the billing, and when the cotton is compressed and forwarded, we make a re-check, giving the car number, seal record, and so forth to the agent in order that he may secure the proper billing covering that particular cotton. It is checked by the compress at the same time. They have a representative that checks for their (R. 2662) own information. If it is moving, they check it in blocks, merely counting the bales to see that they are there. Our men stand at the car door to check the cotton as it is being loaded.

Their checker is possibly satisfied with the block count when he counts it in the block. He frequently confers with our men to see that the figures are correct. We check against one another and eliminate errors (R. 2663). Our check is strictly a car door check to ascertain what goes into that particular car and then seal the car. In the case of cotton that has been compressed there, whether it is moved in by rail or moved in by wagon, our organization has nothing to do with the issuing of the bill of lading. We ascertain the number of bales going into the car. In the morning when [fol. 592] the compress begins operation, we ascertain from the compress what shipping orders they have, the marks, destination, the consignor, and the consignee, and we endeavor then to figure the loading of those shipments in order to get the best loading, and when a bill of lading lot has been completed, to order in one car or two, our inspector notifies the agent of the line interested in order that he might find the bill of lading and prepare his way bill. The agent prepares the bill of lading in some cases and in a number of cases the shippers themselves prepare it and send it to the compress or to the agent for their information (R. 2664). On cotton moving from a local point, domestic cotton, as a rule the agents prepare those bills of lading, but cotton moving export as a general rule the shippers prepare the bill of lading and send it into the compress. The railroads do not require that transit cotton be weighed. It is sometimes weighed, however, at the shipper's instructions. I do not know whether or not the compress charges for that. As a general rule the cotton that comes in by wagon to the compress point is delivered in the first instance to the compress (R. 2665). In some instances there has been cotton moving through flat that was delivered to the carrier on the carrier's platform. When it is delivered to the compress, the compress is the representative of the shipper or the owner of the cotton. The railroad is not interested in city cotton until it is tendered to them. We try to have the transit cotton assembled just as fast as possible (R. 2666). I do not think that it would be possible on transit cotton to secure the maximum loading, because of the congestion at non-compress points. The cotton moving on billings from the non-compress points, moving in from

the yards and the railroads, lack of sufficient equipment to move it from the non-compress points, and it is necessary then to load such cotton as is in close proximity to the car that is being loaded. Therefore, the transit cotton is considerably (R. 2667) mixed and in a good many instances we probably have as many as four or five shippers' cotton in one car moving into the ports. A bill of lading covering 50 bales of cotton may require a week or ten days to be completed in the compress, and if the compress were required to hold those shipments until the entire bill of lading lot is completed, the congestion would be terrific. The compress [fol. 593] has five days within which to compress the cotton. I do not know the average time they take in compressing transit cotton, unloading it and loading it back into the car. Some days it is unloaded and re-loaded in thirty minutes. It depends on the movement of the cotton; the probability is that before the transit cotton moves in, other cotton coming in prior to it has been ordered out, and the compress gives the preference to the first coming in (R. 2668). The amount of loading outbound of the transit cotton, the amount that can be put in a car, is not dependent to any great extent upon the diligence of the compress in getting the car loaded following the inspection. It depends a great deal on the movement to the compress. There is more transit cotton now than there was several years ago, but the movement inbound is in such manner, the bills of lading are not complete, and it is very frequently the case that we have to put four or five shippers' cotton in one car to get a complete car of transit cotton moving out. We have had quite a number of cases where there will be both concentration and transit cotton moving at the same time. We could fill the car if we were to split the way-bill and subject the carriers to an extra hazard in handling of the shipment. We may have a car that holds 75 bales of cotton and three way-bills with 90 bales. If we had a car to load the 90 bales, it would take a 90 foot car. It is a question of cotton (R. 2669) moving in and having sufficient number of way-bills that would complete a car. In behalf of the carriers, we issue instructions to the agents to get as heavy loading from the country station as they can. At the non-compress point, cotton being placed on the platform is billed "transit cotton" and is concentrated into the first compression point.

The drayman in handling cotton at this platform, and the agent when he gets ready to load it out has three cars set, if the platform is sufficient to hold three cars, and has to take the first cotton he comes to in order to load his cars. He has not room on the platform to drag cotton some other place in order to load one shipper's cotton. He cannot always get what we might term (R. 2670) a car load of cotton as the average loading is 27 bales. They have not the necessary crew. Probably one man is doing the loading and one man cannot load a car of cotton to its capacity. It does not necessarily depend on the diligence of the local agents; it depends a good deal more on the size of the equip-[fol. 594] ment. We have a number of pretty small cars on the Texas & Pacific, including a number of refrigerator cars that are being used. The lines have to take all the equipment they have available for the cotton handling. I think, however, that would constitute relatively a small percentage of the total cars (R. 2671). The railroads have had quite a good deal of shortage of equipment in the last three years for the handling of cotton. The shortage has occurred particularly in the interior of Texas. I have not examined the reports of the American Railway Association as to car shortage. I do know that the Association during the present season has been very vigorous in the handling of cotton, insisting on heavy loading both from the interior points and from the compress, and we have rendered to the Association during the season monthly reports. If the local agent that is loading 22 bales of cotton in a car were to accumulate that cotton until he could load 30 bales in a car, he would save cars by so doing. However, the chances are that it would be very badly blocked and it would require considerable more equipment and more time and more expense to the carriers (R. 2672) in handling it. They load this cotton out just as fast as they can. If they have 15 bales on the platform and that is all they have, they load that 15 bales out and get rid of it, because they don't know what tomorrow will bring forth. The platform will hold so many bales of cotton, and they do not want to have it congested. There are some platforms that will probably hold 500 bales of cotton; there are some at small stations that would not hold more than 100 bales of cotton. It is also necessary to get the cotton on to the shipper because there

may be a claim for delay otherwise. I do not know what claims the carriers have for delay (R. 2673). There have been a number of claims. I think the Government estimates that there is probably about $1,000,000 of loss on account of damaged cotton, and all of those losses would probably be charged to the railroads. I am not familiar with it. I don't know how much of that is charged, but I do know that the railroads are charged with a tremendous amount of damage claims. It has been my duty to make investigation (R. 2674). The damage usually consists of exposure to the weather, absorbing the rains, standing on the ground, becoming mildewed, and the fiber of the cotton losing its strength and rotting. That is damage before the railroad got it, but the railroads are called upon to pay it. During the past three years, there has been a large loss on account [fol. 595] of damage to cotton. I had one claim just a few days ago of $800.00 on 57 bales of cotton; they claim that the damage occurred after the bill of lading had been signed by the agent at the non-compress point. The bill of lading was through domestic bill of lading and the cotton was in the hands of the carrier probably one day from point of origin to the compress point and three days (R. 2675) from the point of compression to the destination. I think the claim was declined on our recommendation. Cotton has very much heavier claims than any other commodity (R. 2676). If the agent has 15 bales of cotton and knows tomorrow that the bill of lading is going to be complete with 10 bales more, he will try to hold the 15 to get a complete loading of the bill of lading lot, but we cannot govern that because weather conditions have a good deal to do with loading. Cotton moving from country points into concentration points moves in various odd lots, small and large, just like transit cotton. The carriers generally compress cotton at the first compress point, unless the particular compress is blockaded, and some presses are blocked often. We have them during the peak of the season. They are blocked up three or four days. We put an embargo on them and until they lift the embargo or we lift it until we can take care of it, we are blocked. There is quite a lot of it during the peak of the season. If the movement is all at once, they will be blocked and then the condition gradually eases up. If the compress becomes congested, we simply move the

cotton to the next compress point available, but if it is local cotton, we have to unload it there. There were no more congestions this past season than during the preceding two years. I cannot recall more than three presses in my territory in Texas that suffered embargo for more than two or three days at a time. If I embargo a press for one or two days that does interfere with the handling of cotton. It gets the railroads a little congested in the movement of the cotton with the equipment, but there are very few presses that were embargoed during the present season. We give a notice of arrival to the press on all cotton. My Exhibit No. 104 undoubtedly includes both city cotton and railroad concentrated cotton, under the heading of "concentration." The Exhibit does not make a distinction between railroad concentration and city concentration. The total number of 595,000 bales represents probably some city free concentration and railroad concentration cotton (R. 2693). The [fol. 596] amount of city cotton cannot be determined from this Exhibit, except by going to the compresses and getting their shipping orders and examining each individual bill to see where it originated. The total number of bales moving out on Exhibit No. A-104, compressed and concentrated, would not prove that every bale shown by Exhibit No. A-105 moving inbound had moved out. The inbound movement is concentrated, and probably a part of this cotton covered by the Exhibit remained at the press through the next season. The concentration cotton may remain a year and then be shipped out on the transit privilege. You cannot match up one set of figures as against the other. I have nothing to do with concentration claims filed at the ports. The Bureau does not make a check of concentration claims filed at interior points, unless there is a transfer or endorsement on the expense bill or bill of lading, or unless the claim is filed at a cotton mill point, such as Dallas, in which case we check the cotton covered by those inbound expense bills to see if any of it has been sold to the local merchants. If the cotton moved in to a man who made a transfer by endorsement and transferred the expense bill, then we verify the transaction between the parties to see that there was a bona fide sale. It frequently happens that a claim may be made on an outbound shipment of 100 bales from Dallas and be supported by inbound expense bills from quite a number of

points (R. 2696). We do not check the claims as to rates. We merely check the concentration as to transfer, to see if one shipper is entitled to use another shipper's expense bill (R. 2697). There is quite a lot of work to be done in that connection; four of us do it. I probably handle, myself, perhaps 100 or 150 claims a month. My assistant on the road will probably handle that many or more. That is in my particular jurisdiction. The railroads do the checking to see if the privilege should be granted at that point. We do not pay the compress to put any bands on transit cotton, where the bands have come off in the car. When he cotton is compressed, he compress puts on either 7 or 8 bands as the shipper orders (R. 2699). As a rule, the crop moving from Texas points is 8 band cotton. When the shipper requests 7 bands, he does not get any allowance. The shipper is not charged with the bands put on the cotton, unless he should happen to demand 10 band cotton. Flat cotton has [fol. 597] 6 bands (R. 2700). We prepared Exhibits No. 104 and 105 on short notice, and did not have time to go all through the alphabet and take all the compress points. Therefore, we divided it up so that we could get a representative exhibit of the State in all directions. No particular compress was selected for any special reason. Some points appear on one exhibit and do not appear on the other, because a part of the records on those points had been misplaced in our office. Our inspector at Garland did not send in his inbound record (R. 2701). We desire to maintain a complete record of all transactions, but in these particular instances we did not have them available. We worked up Exhibit A-104 first, and then worked up A-105 later (R. 2702).

I am generally familiar with the carriers' country platforms and station facilities. There have been practically no increases in the carriers' country facilities in the last ten years. They are unable at the present time to assemble flat cotton in car loads. It is a matter of expediting the cotton to the compress so that the carriers' local country facilities, and the cars, may be released promptly by making a short haul to a compress point in order to handle the peak movement of the cotton. That is generally the purpose of making very light loading from the carriers' country stations to the compress points (R. 2703). The com-

presses have in some instances assembled broken lots, which the carriers hold on their facilities until the complete lots of transit cotton have arrived; that is done where they know the cotton is enroute. For instance, if there is some one buyer in that immediate territory who has been buying practically all the cotton, then the carriers try to assemble it. I might use as an illustration Anderson, Clayton & Company's cotton. It is a fact that the country station is likely to load flat cotton in a large number of cars which will get to the compress quick, and that one lot will be loaded in half a dozen cars. I have a bill of lading covering 25 bales loaded in four cars. It is necessary for the compress to unload all of these cars and release them. We require that. Because of the shortage of country facilities of the carriers, it is necessary for them to unload those cars during the peak of the movement (R. 2704). In handling cotton at the country station, the shipper makes arrangements with the cotton loader, a man to haul his cot-
[fol. 598] ton by wagon from the cotton yard to the railroad platform. They frequently load it right direct into the car. The man who has charge of the hauling has probably two or three shipping lists, giving tag numbers of the cotton that he is to haul to the platform. He puts my cotton and yours on the float and delivers part of your cotton and part of my cotton. That makes the congestion rather bad at the platform. If they would haul each individual shipper's cotton at one time and deliver it, it might be handled a little better, but they will not do it. They are saving time for themselves. I think they work at so much per bale. I have attempted to get them to handle the cotton so we could segregate it (R. 2705). The platform will probably accommodate one to three cars, and if they set a car at one end of the platform and we are loading at that point, it may be part of your cotton and part of mine. That is one of the reasons why transit cotton is loaded lighter, because you have a bill of lading for 50 bales of compressed cotton but you have three bales over here and 40 bales some other place. The railroads are so situated so that you cannot get any one individual's cotton into a car. We have to take the cotton off of the platform as we come to it. The Western Weighing and Inspection Bureau have men at these interior compresses who are en-

deavoring to get this cotton loaded as heavily as possible for Houston and Galveston, and also endeavoring to prevent the mixing of the cotton so it will not have to go to these mixed platforms. The compresses are cooperating with us in that effort as far as possible (R. 2706). The showing of that exhibit reflects the extra cost to the carrier in handling this cotton at the mixed platform. I did not mean to testify that there was a small movement of flat cotton in Texas; I meant from the compress. There has been a rapid increase in the movement of flat cotton to the Texas ports (R. 2707). I suppose that out of the Dallas office, we would probably handle 400 or 500 concentration claims a month. The Houston offices have their representatives at that point to cover the southwest and southeast part of Texas. These men handle concentration claims in line with their other duties. If there is a quick investigation to be made, we will make that particularly. I do not believe we would be able to reduce our forces if we did not have to handle these claims; we have no men hired for [fol. 599] that special purpose. We make an investigation when the carrier sends the claim to us and asks that we investigate, and it would not be referred to us unless there is some particular reason, such as change of ownership.

Redirect examination:

If the one rate plan were established on cotton to the Texas ports, there would be claims filed on a large amount of cotton which is not now handled on concentration claims. That will result largely upon the cotton that the man back of the water front sends to the ship (R. 2709). I do not have anything to do with claims at the port but I should judge from the records of the carriers that they keep and we do not keep that there is more work for our organization in connection with concentration claims at the ports than in the interior. I know that whenever a concentration claim is filed by a man at the port, the carrier or Bureau or somebody has to run the cotton back and find out whether or not it had a first concentration in the interior (R. 2710).

WITNESS C. A. MITCHELL RECALLED

My Exhibit No. A-106 shows rates to the ports of New Orleans and Savannah, shipside delivery, from Memphis, Tennessee, and from various important points throughout the State of Arkansas. The third column of figures shows the difference in favor of New Orleans in the rates to the ports. The rates to both Savannah and New Orleans are exactly 5¢ higher than the domestic rates, so that this difference exists in both the shipside rates and the domestic rates. The next column shows the ocean rates from the ports to Liverpool, England, and is representative of the rates to all European ports. From Savannah, the ocean rates, except in the case of Memphis traffic, are 7½¢ lower than the New Orleans rate. In the case of Memphis traffic, there is a special differential of 11¢, agreed to at the Gulf and South Atlantic Steamship conferences some years (R. 2713) ago, after the Commission fixed the 7½¢ inland spread from Savannah and New Orleans. There is a difference in the normal insurance rate of 5¢ a bale in favor of Savannah, based on a value of 20¢ a pound. At that value, the practice is for the shipper to insure for $110.00 a bale, adding 10% to the actual value. I have based my [fol. 600] insurance figures, however, on a valuation of $100.00 a bale. To the right of the last vertical line, I have the total through rate via New Orleans and via Savannah, and the difference in favor of New Orleans and the difference in favor of Savannah. That is the total through rate from the shipping point to Liverpool. The difference is applied to all European ports (R. 2714). The total figure via New Orleans includes a 1¢ insurance penalty, which I have shown in the other column, so it will be seen in this exhibit that in the case of Memphis, Savannah has a ½¢ advantage over New Orleans, and in a number of other instances, at Forrest City, for example, Clytheville, Jonesboro, Hoxie, and Newport, the total charges through New Orleans and Savannah are the same. There are some points, Batesville and Cotter, which are representative of all points on the Missouri-Pacific Black & White Division in Arkansas, where Savannah has a 3½¢ advantage. That is abnormal, and I do not know what the cause for it is. At Little Rock, Pine Bluff, and other

points following, the difference in favor of New Orleans only amounts to 1½¢ per 100 pounds, so the implication that it would be impossible for Arkansas cotton to move through Savannah is not well founded. I do not think that the difference in distance has anything to do with the making of the rates. They are group rates (R. 2715). Savannah is generally farthest away; from Memphis to New Orleans is 395 miles, to Savannah is 686 miles. The following figures show the number of bales of cotton received at New Orleans via the Illinois-Central system, including the Yazoo and Mississippi Valley Railroad, during the months of October, November and December, 1924 and 1925, the total number of cars, the total detention in days, and the average days of detention per car. This is only the number of bales moving on through export bills of lading. It includes cotton originating in Arkansas, Mississippi, Louisiana, Tennessee and everywhere. For October, 1924, 34,430 bales, 662 cars, total days' detention 6,028, average days' detention per car 9.4 (R. 2716). November, 1924, 62,494 bales, 1,128 cars, total detention in days 10,697, average days' detention, 9.6 per car. December, 1924, 49,733 bales, 881 cars, 9,483 days total detention, average days' detention per car, 10.6. 1925, October, 54,682 bales 992 cars, total days' detention 6.131, average days' detention per car 6.1. November, 1925, 42,202 bales, 766 cars, total de- [fol. 601] tention in days 3,349, average days' detention per car 4.2. December 1925, 40,091 bales, 733 cars, total days' detention 6,011, average days' detention per car 8.1.

Cross-examination:

Those figures were furnished by the Illinois-Central Railroad. The Illinois-Central representative stated at New Orleans that they handled cotton from points on the Rock Island in Arkansas and various Arkansas lines through New Orleans. I do not know whether or not any of this cotton originated in the Southwest. I am not familiar with it (R. 2717). Demurrage is not charged on through business, because it is short of its destination. Demurrage would be charged where the shipper held it at the port for high density compression, and the cancellation of that would hurt the port operator and not the interior operator

(R. 2718). Under a through bill of lading the carriers hold the cotton in the cars ten days without demurrage for the shipper. The owner ships the cotton, it arrives at the port, and if the ship is not in the port, something has got to be done with the cotton. Cotton is arriving at New Orleans all the time, the Illinois-Central unload all of the cotton as it comes into New Orleans and hold it in their warehouse until such time as the ship is receiving cotton. They unload part of it. The- do not undertake to unload it on the wharves. It is not true that at this period of the year or at any other time that the wharves are congested and they could not unload the cotton. The owner may not be responsible for that but it is a necessary evil that goes along with the handling of the cotton (R. 2720). I don't think the port facilities have anything to do with it. It is not the practice to unload it on the wharf. The reason for not unloading this cotton on this wharf to take advantage of the 10 days free storage [fol. 602] at New Orleans was, according to my information, because the steamship was not receiving cotton at that time (R. 2721). My information in regard to the Illinois-Central is, and I know the same thing occurs at other ports, that they can not shoot the cotton straight down to the wharf when it arrives at the port. It is held under a through export bill of lading for account of whoever owns the cotton. It is in transit; it is not the fault of the port, I would not say it was the fault of the steamship, but in the handling of the export movement they can not get in the cotton from all directions and shoot it on to the port in the first place. A shipper may want all of his cotton to go via a particular line and on a particular steamship, and he asks that [fol. 603] the foreign freight agent hold it up for him, and I understand (R. 2722) that in some cases that does occur. The cotton is held for the account of the owner of the cotton, but it is not held at his specific direction. The Illinois-Central Railroad owns the Stuyvesant docks, but all of the cotton does not move out over those docks. All ships do not berth there. According to my information, any cotton moving out via another steamship would have to move out over another dock (R. 2723). I would say that the Illinois-Central would handle all of the cotton they could over the Stuyvesant docks. The delay may have been partly in the car and it may have been partly in the warehouse (R. 2724).

The carriers unload the cotton at New Orleans as soon as they can after it gets in there, so that all of the delay on a through export bill of lading at New Orleans may not be actual car delay. Part of it is storage delay. If it had not been delayed in the warehouse, it would have been delayed in the cars. I simply set down the delay of the shipments and not the delay of the cars. That is the number of days those shipments were held at New Orleans from the time they reached New Orleans until they were ordered out over the docks of the steamship companies at New Orleans. It is our position that it does not make any difference whether the carrier furnishes the interior shipper free car detention without free storage (R. 2725). Anybody can use the 10 days' storage on the docks; it doesn't make any difference whether it is on a through bill of lading or not. It is open to the port man, the interior shipper, and everybody alike. I do not say that there should be a higher rate on Texas cotton destined to Liverpool through New Orleans than would apply through the Texas ports. New Orleans does not think there should be, but there is (R. 2726). I do not think there should be from Oklahoma. We think the rates should be equalized. New Orleans is equalized at the present time on the through movement to Liverpool with Texas ports on Oklahoma cotton. It would change the movement of the cotton substantially, if there was a 3½¢ difference per 100 pounds in favor of the Texas ports (R. 2727). I think that a 3½¢ per 100 pounds difference to Liverpool in favor of the Texas ports would divert cotton from Oklahoma to the Texas ports. I favor the two rate plan at our ports and any other ports. If the shipside export rate from Texas points to the Texas ports should be reduced, I would want a reduction in the New Orleans rate to shipside (R. 2728). [fol. 604] I think the reduction would work around to all of the ports. I think that would reduce the carrier's revenue. If they reduced the export rate from Arkansas to Texas ports, the New Orleans export rate should not remain the same (R. 2729). If the delivery rate at Houston should be increased as a result of this proceeding, we would not willingly submit to an increase in the domestic rate to New Orleans. The export rates are one thing and the domestic rates are an entirely different proposition. At New Orleans we have a consumption of about 42,000 bales a year.

We have rates from about half of the State of Louisiana to the Southeast based on the local domestic rates to New Orleans (R. 2730). We do not see any reason in the world for any increase in the rates to New Orleans because somebody has built a shipside compress at Houston. The rates via the Barge Line from those Arkansas points to Memphis and New Orleans are about 80% of the port to port rail rates. Cotton moves on those rates to some extent, I do not know how much (R. 2732).

WITNESS E. H. LOCKENBERGER

I am Superintendent of the Public Cotton Warehouse at New Orleans. Exhibit A-30 filed in the original hearing, the square blocks in "T" field and "H" field, which I testified at that time I could not identify, are double hydrants, fire apparatus (R. 2735). This chart was originally prepared by the Louisiana Fire Protection Bureau for the purpose of showing that fire apparatus. We keep records showing the delivery of all cotton from the warehouse to any source, and make monthly reports of that. Exhibit A-107 is an analysis of deliveries at the Public Cotton Warehouse of all cotton for the years shown; I have checked it and know it to be correct (R. 2736). The exhibit is prepared [fol. 605] from the warehouse record (R. 2737). It shows that the percentage of cotton out over the warehouse wharf ranges from 7 to 50% of the total cotton moving out by vessel.

Cross-examination:

On Exhibit A-107 the season of 1922-1923 represents the entire season. The figures for 1925-1926 represent only from August 1, 1925 to April 30, 1926. Of course, the ratio would be smaller. We did not consider the delivery of cotton to consumers at New Orleans. We considered only berth deliveries. When we give them steamship deliveries, [fol. 606] it is up to them to make delivery where they can (R. 2738). They have regularly assigned berths they go to. The figures up to April 30, 1926 show that we handled more cotton up to that date than we did the entire season of 1923-1924. The business of the Public Cotton Warehouse

has been growing steadily. The merchandise we export by car goes to any wharf on the city front. We distinguish between delivery by dray and delivery by car. Where it says "delivery by car" that means delivery is made by use of the Public Belt Railway to the wharf. The 6.8% in 1925-26 is the percentage of 374,944 bales, the total number of bales that went by vessel, direct from our facilities to the ship (R. 2739). The total number of bales that went out of the wharf is shown in entry No. 3, export, 25,773 bales. That is 6.8% of 374,944. The export over the warehouse wharf for the season of 1925 and 1926 dropped from 35.33% the previous season to less than 7%; the steamship companies consider where the cotton is going to be delivered; they chose to take it at their own wharf. They don't care to shift to any other wharf if they can possibly help it (R. 2741). During the busy season, from time to time, we delay the carriers' equipment that comes to our facilities. Inability to unload cotton as fast as it is received causes the delay. We do not handle any through bill of lading cotton. There are delays to shipments received at the warehouse for concentration, and for every delay on that today we have to pay demurrage (R. 2742). Our tariff provides that cotton going to the wharf house to ship should receive ten days free time. The facilities in New Orleans cannot take advantage of that by draying cotton to our facility, unless it passes through the warhouse proper. If they are storing cotton in our warehouse, they can. If they are storing it in an uptown facility, they can only get the ten days free time that is given to the ships (R. 2743). Any uptown facility in New Orleans can dray to the wharf and get ten days free time from the time the ship commences to receive. The steamship company designates the time the compress can send cotton to this wharf within that ten days. So far as the warehouse proper is concerned, we have in addition to this ten days that extra ten days for accumulating the cotton on the wharf. By allowing the cotton to come through our warehouse, you have an extra ten days in addition to the steamship ten days. Twenty days free time would be given on that cotton (R. 2744). In the case [fol. 607] of cotton brought to the public warehouse and there compressed to be moved to shipside at our wharf, the compress charge includes only the compressing and the free delivery (R. 2747). The handling charge for the cotton

includes the free time. It is part of the service he pays for, whether secured or not. If we have no room in the berth for the cotton to be stored 20 days in advance, we would not agree to accept delivery. It is invariably true that we can assemble a part of the cotton in the berth in a given number of days before the arrival of the ship. On lots consisting of 1,000 or more bales, you can always find room on the wharf either up stairs or down stairs to make delivery (R. 2748).

Redirect examination:

The ten days the ship gets is paid for by the ship. It is given to the ship to permit the ship to assemble its cargo. It is not free time given the shipper to permit him to accumulate a cargo. The shipper would not need ten days to accumulate his cargo. We do not keep a record as to cotton received from any certain territory.

WITNESS C. B. BEE

I am employed as Traffic Adviser for the Corporation Commission of Oklahoma. I have had about twenty years experience in traffic matters in the southwest. I think I am familiar with transportation and traffic conditions throughout the southwest generally. I have had considerable experience in the handling of cotton by rail. I am familiar generally with the consumption of cotton in Oklahoma (R. 2898). The consumption of cotton at the present time, as compared to last year, is somewhat larger; and the prospects for the immediate future show a considerable larger consumption of cotton in Oklahoma. We have two mills at the present time and two more are contemplating opening up.

It is my opinion that concentration and compression are so interwoven that it has become impossible to segregate them, and that without these facilities in the interior not only the cotton producer and the railroads but every shipper in the southwest would be penalized. The Federal ginning reports show that 85.5% of the (R. 2900) 1924-1925 cotton produced in Oklahoma was ginned prior to December [fol. 608] 1. For the whole season in Oklahoma, 1,506,077

bales were ginned, and if this cotton had been delivered to the carrier for flat transportation to the ports, transportation would have been paralyzed. On the basis of 30 bales of flat cotton to the car, and this estimate I consider extremely high if cotton were moving to the ports, this would have required 42,916 cars or 613 a day for 70 days, for the transportation to the ports, practically all of which would have been returned empty. The unusual empty northbound movement in the fall season is due to the fact that grain and cotton are moving to the ports, and there are no commodities moving in a reverse direction of any such volume. A large part of the grain has moved prior to the cotton starting, but there is always a heavy movement of grain from the interior facilities, especially from the Kansas and Nebraska fields throughout the south at that particular time (R. 2901). The grain is mostly wheat. Under the present system of compression and storage in the interior, less than ⅓ of that amount of cars is required. It is not impossible, especially at the first of the season, for the same cars to move into the compress points on two successive days with cotton from the interior points, and on the estimate of a requirement of 12 days for flat cotton to move from the interior to the ports and return to the interior, this one car moving to and from the compress and the interior, would perform in two days what would be done in 24 days if the movement was flat to the ports, or it could then take care of compressed cotton to the ports, thus performing the work of two to three cars on the basis of compression only versus flat movement only. The local station platform facilities of the carriers in Oklahoma are not such as to permit of the sorting of cotton (R. 2902) and it is imperative that cotton be loaded from interior points as it comes to the cars. At many points cotton does not even go to the platform, but the producer or drayman loads it directly into the cars. Experienced car loaders are not available and the natural and necessary result is that the full facilities of the car cannot be secured from the origin point and were cotton to go to the ports flat, it would then require that every such bale be unloaded by the carrier, sorted, re-loaded, and then delivered to the consignee. Even if all cotton were compressed in the interior but no concentration took place, the number of cars that would move to the mixed platform [fol. 609] at the ports would be augmented. There would be

no incentive for the compresses to have storage space and the work of unloading, compressing, and re-shipping would be confined to the smallest space possible. The present practice of compressing and concentrating in the interior tends to a more orderly marketing of the crop, insures the utmost use of the available equipment, materially reduces the handling at the ports, and results in a more efficient transportation on the part of the carrier. It is my opinion that there is no service the carrier performs that results in a greater economy than the compression and concentration of cotton in the interior. Practically all other stopping in transit service is performed for the benefit of the shipper or for the purpose of holding traffic to the carrier. In most instances, the giving of transit privileges results in the use of more equipment and the lighter loading of cars. I know of no other commodity, except grain, where the granting of transit permits the carrier greater use of its cars, and this is not true of grain to the extent that it is of cotton. I consider it a service that pays the carrier back manyfold (R. 2904). The 12¢ penalty for passing a compress is really not a penalty charge, but should be considered as another distinct rate on the same commodity by reason of its packing. The present rate adjustment between Oklahoma on the one hand and Texas on the other forms a situation that is to the disadvantage of Oklahoma. Any additional penalty put upon Oklahoma cotton or a now existing penalty removed from Texas cotton, and permitted to remain on Oklahoma cotton, will only increase and exaggerate the present undue discrimination against Oklahoma, and to that extent the discriminatory features of the present rate adjustment must be considered by the Commission. Exhibit No. A-60 is a map showing the production of cotton by counties in Oklahoma and Texas for the years 1921 to 1924 inclusive. The bales shown in each county are what is known as running bales and do not give a true picture of the actual production in each county, and the Government figures of 500 pound bales should have been used. In the year 1924, there were produced in Oklahoma 1,504,671 bales of cotton of 500 pounds each. I have taken the county seats of certain counties in Texas and in Oklahoma, and figured that the entire movement of that cotton will take place (R. 2906) from that county seat, or the nearest rail-

road town, if the county seat is not a railroad town (R. 2906).

[Fol. 610] Western and southwestern Texas is increasing in the production of cotton, and the average movement of cotton from Texas points is becoming longer each year. On the basis that each bale of cotton produced in a county had its real transportation from the county seat of that particular county, there were required in the transportation of the Oklahoma 1924 cotton to Houston, Texas, 665,689,000 bale miles of transportation, and this produced for the railroad $7,588,358 in revenue. The average haul from Oklahoma to Houston was 442.41 miles, and for this the carriers received 1.14¢ per bale mile which is equivalent to 45.6 mills per ton mile. The average payment per bale was $5.04. Contrasting this with the Texas production we find that in Texas counties where the county seat is 336 miles or more from Houston, Texas, there were produced 1,359,231 bales of cotton and to transport this cotton from the county seat would have required 640,301,000 bale miles for which the carriers would receive $5,798,835. The average haul is 471.08 miles and the revenue $4.27 per bale or .906¢ per bale mile, equivalent to 36.2 mills per ton mile. (R. 2908). In the Texas figures there are included in the revenues the arbitraries accuring for transportation performed in Texas differential territory, a territory recognized as more expensive from a transportation standpoint than transportation in or from Oklahoma. The mileage performed from the Texas county seat towns ranges from 337 miles at Bowie, Texas, to 821 miles at El Paso, Texas. In no instance did the Texas rate exceed 99¢ per 100 pounds, while the average from Oklahoma is in excess of $1.00. It is significant that for 25,000,000 additional bale miles necessary to transport 145,440 additional bales of Oklahoma cotton to Houston, the carriers received $1,790,000. In other words, for 640,000,000 bale miles performed in Texas, the carriers received $5,798,000, and for the Oklahoma movement constituting 104% of the Texas movement, the charges would have been 131% of that charged on Texas cotton (R. 2909).

The proposition of the Houston Chamber of Commerce in asking that the penalty for cotton moving through without compression be removed on Texas traffic and retained

on Oklahoma traffic would mean that giving like service to the cotton from two counties, LeFlore County, Oklahoma, and Scurry County, Texas, for the same distance and the [fol. 611] same volume of traffic, approximately, would result in the Oklahoma cotton paying $31,317 more than (R. 2910) the Texas traffic, or that Oklahoma would pay about 23% more for the same amount of transportation. We therefore ask that in the event the one rate is established, and I strongly favor the one rate plan, that all rules, regulations and conditions that apply from points in Texas, whether on state or inter-state traffic, be likewise applied on Oklahoma traffic to the Texas Gulf.

Cross-examination:

The tendency to store grain at the interior points is on the increase. A large grain elevator is now being constructed at Enid, Oklahoma, in the northwestern part of the State (R. 2912). Since the two rate plan has become effective, whether by reason of that plan or not, the concentration of cotton in the interior has decreased. The use of storage facilities in the interior has materially increased in the last five years, because we have better than 100% increase in our production. I have not checked the figures as to the proportion, but in the last two years I know that the use of concentrating facilities, that is, the percentage of cotton concentrated, has shown a decrease in bales (R. 2913. The fact that the cooperative associations have established concentrating points without the State would have some effect. They handle, I should say, something over 200,000 bales of cotton, but I do not believe that amount would effect the change (R. 2914). There is a point, as you come nearer to the point of destination where compression ceases to be an economy to the railroad, even if the carriers do not pay for the compression, but I would not attempt to say just where that line should be drawn. By reason of the peculiar handling of cotton, the merchandising that has always taken place at the port, and in order to keep that competition at the port, I think the any quantity rate on cotton should be maintained, but only for that reason (R. 2916). I do not think that all cotton is necessarily to be concentrated at the interior. I think it all should be compressed, and if the compression is taken

away, I do not believe interior concentration would last two months (R. 2917). If you take concentration away from us, then you take all incentive to hold the cotton back at the interior for an orderly marketing; you would force all of that cotton to go to the port as fast as the compresses compress it. Primarily concentration was a service for the merchants. But, by reason of its use, and the movement of the cotton out in the short time that it does, it tends to be [fol. 612] a service for the carrier, in that it tends to hold the cotton back from moving to its final market, and in that way distributing over a longer portion of (R. 2918) time the marketing of that cotton and therefore the railroad movment. Our transportation system, in my opinion, will fail unless we do hold some of our cotton back in the interior.

I have looked to find out if there is any other commodity aside from cotton where the export rates are higher than the domestic rates to the same port, and I have not been able to find one, except an unusual situation in certain southwestern counties on the Frisco in regard to wheat, a rate that will not be used and will expire before the beginning of the wheat shipping season. The same or similar free time is permitted on other export traffic shipped from Oklahoma as on cotton, and so far as I know the additional free time allowance has never been used as an excuse to make the export rates higher on other commodities (R. 2927). The Farm Bureau Cooperative Association handled their cotton in Oklahoma for some time. They are at the ports now. I don't see what difference it makes whether it is Jim Jones or Anderson, Clayton that takes their cotton away from Oklahoma so long as the business is taken away. I am familiar with the variations in the operating costs for gross ton miles and net ton miles of the Oklahoma roads generally. The per ton mile on the G. C. & S. F. between Purcell and Gainesville is the lowest in Oklahoma, and the only line that would approximate it in my opinion would possibly be the Kansas City Southern (R. 2928). The low operating ratio of the G. C. & S. F. is due to the high traffic density. I think we had figures showing that the G. C. & S. F. operating ratio is 52%. I do not think that could be representative of carriers as a whole (R. 2929).

WITNESS J. L. SMITHWICK

I am Assistant Manager of the Farm Labor Union Mercantile Co. at Krum, Texas. I am a member of the National Executive Committee of the Farm Labor Union of America. I am appearing in this proceeding on authority and request of the National Executive Committee to testify on behalf of the cotton producing members of our or-
[fol. 613] ganization located in Texas, Oklahoma, Arkansas, and western Louisiana. There are approximately 75,000 members in these four States which produce approximately 300,000 bales of cotton per year. Membership is this organization is conditioned upon the applicant being an actual producer of farm products. We market about 90% of the cotton produced by our members. We use interior concentrating facilities in marketing our cotton. A large percentage of the cotton is sold to interior concentrators. These interior facilities are necessary to the marketing (R. 2951). Any penalty for interior concentration, we believe, will be borne by our members who are producing cotton and they are not able to bear any additional burden. We feel that the existing back haul privileges should be continued without penalty.

Cross-examination:

Our cotton is marketed through our National Sales Agency (R. 2952). I am not very familiar with the marketing situation (R. 2953).

WITNESS W. J. JOLLEY

I reside at Valley View in Cook County, Texas. I am a member of the State Executive Committee of the Farm Labor Union of America, Texas Division, and am Secretary to that body. I am employed as Manager of Valley View District No. 1, Farm Labor Union of America. There are approximately 40,000 members in Texas who produce annually approximately 160,000 bales of cotton. The position of the State organization is the same as that of the national organization previously stated by Mr. Smithwick. I have charge of the handling of cotton marketed by our members residing in my district. During the year 1924-

1925, I handled for our members approximately (R. 2954) 1600 bales, and during the present season handled approximately 500 bales. The decrease being due to the fact that we are in a drougth stricken area. The member surrenders to me, as agent, the weigher's receipt for his cotton, together with instructions as to whether to sell or hold. In case of instructions to hold, the cotton is shipped to Gainesville and placed in the compress warehouse at Gainesville pending decision of the members to sell. I pay the freight to Gainesville, receive expense bill from the railroad and [fol. 614] warehouse receipts from the compress company. Upon decision of the members to sell, the freight bill is attached to the invoice and collected from the buyer. In event of instructions to sell at once, the cotton is sampled by me or one of my Assistants. I notify the County Grader-salesman, who in turn notifies the State Grader-salesman that there are so many bales of member cotton at Valley View for immediate sale. The County grader-salesman, or the State grader-salesman actually effect all sales of member cotton, and I receive shipping instructions from the one effecting the sale. Under the existing conditions, whereby there is no penalty for interior concentration or back haul (R. 2955), from Valley View to Gainesville, we have available the markets of Gainesville, Ft. Worth, Dallas, Waco, and the ports. If a penalty for back haul was assessed, the markets of Gainesville and Dallas would be open to us only on the payment of the penalty, and if a penalty for interior concentration were assessed it would attach at all the interior markets, and all these markets would not be open for us on an equal basis.

Cross-examination:

The description I have given with reference to Valley View and Gainesville is representative of the system used by the various divisions of Farm Labor Union throughout the southwest (R. 2956). It is our belief that the producer has to stand the distribution cost in the price that he gets for his products.

Witness George E. Drewery

I reside at Dallas, Texas (R. 2964). I am Secretary-Treasurer of the Shippers Compress and Warehouse Com-

pany. I have had experience in the compress business in the southwestern states since 1900, with the exception of 1901, in the states of Arkansas, Oklahoma and Texas. I have worked as bookkeeper, compress superintendent, general superintendent, and Secretary-Treasurer at the present time. I am generally familiar with the operations and details and management of compresses in these states.

[fol. 615] (That part of the testimony of Witness Drewery, dealing with the issue of compression, and all of the testimony — E. F. Wade, which deals with the same issue, have not been narrated.)

Witness Drewery: About four years ago, we began to note a considerable increase of transit cotton moving through our plan- to Gulf Ports, and our railroad concentrated cotton began to show a light decline, until at the present time, the transit movement predominates and our concentrated cotton has reached the point where it is not more than about 30% of the total business moving through the Texas plant. This decline of concentrated cotton is not be reason of any lack of facilities to handle it at our plant, but is due to the manifest advantage in freight rates that can be obtained by concentrating at ports and delivering direct to steamship for export. It has gotton to the point that at no time have we a stock of concentrated cotton on hand sufficient to fill one-half of our compress storage facilities, and such cotton as is concentrated at our plant, is shipped to us by what are termed f. o. b. men from towns contiguous to compress points, they being the buyers who purchase direct from farmers and find it necessary to concentrate at an interior point in order to get quick outturns on weights and classification of cotton, which they sell to shippers or exporters (R. 2982). The decline in the concentration of cotton in the interior of Texas began at about the same time shipside facilities were opened at Houston. Our stocks of concentrated cotton in interior Texas have materially declined since the season of 1923. The decrease of interior concentration makes it possible for Texas plants to store concentrated cotton in two rows and one work aisle alternately throughout the storage shed, which makes every bale accessible for taking out of rows and trucking to press room and for re-sampling without moving or shift-

ing the bales in the row. In other words, the cotton is so stored that each and every bale is accessible from an aisle, so that they may be reached and trucked with minimum labor cost of shifting cotton around in the warehouse. This reduces labor cost on stored cotton in Texas as compared to [fol. 616] other southwestern states. Generally speaking, I believe Texas interior compresses are prepared to store an average of 15% of their total season's business at any one time, which would take care of all cotton moving through Texas interior compress plant-, even though it were again 90% concentrated by railroads at interior plants. My reason for this belief is that Texas interior plants have taken care of the concentration of 90% of their total season's business, and are in (R. 2983) even better shape to do so now than ever before for their plants have been built up to fully shed such an amount of cotton, and at the same time these sheds were built, they fully expected that interior concentration would be continued. The Texas crop moves notoriously fast to its final destination, whether it be domestic or export, which is another reason why the present interior compress facilities can take care of the Texas crop while in process of marketing to final destination. An increase in the quantity of cotton concentrated at the interior would permit a more uniform movement of cotton by railroad as interior shed facilities act as a reservoir in which to store cotton during the peak movement of the season, thus releasing railroad equipment, and insuring a steady, leisurely movement out of compress points which tend to reduce overtime wages and insurance expense, that compresses undergo while handling the present large quantities of cotton moving in transit from originating points to ports. At an average size compress plant, the same Superintendents, Clerks and Watchmen, and practically the same Laborers, handle concentrated cotton without additional expense for those purposes, and such concentrated cotton as is handled creates a revenue that enables better salaries to be paid and longer terms of service to be given to clerks and laborers (R. 2984).

[fol. 617] Cross-examination:

Concentrated cotton would average 3 to 5 days, slightly more than transit cotton at Longview, Tyler and De Leon, but moves through practically as rapidly as the transit cot-

ton. It is our experience that generally speaking a merchant, who has an interest in a compress does not concentrate his cotton at that press. That is true because a great many of our own stockholders have facilities at the port, and they take it to the port (R. 3021). There has been the tendency for concentration to drift to the port for about four years. Prior to four years ago, the concentration was [fol. 618] more general with us. Our stock of cotton on hand was usually nearly up to capacity. Since the shipside facilities were put in at Houston, we have lost several concentrators who have gone to Houston, namely, Major Cleaver, Theo Marcus & Company, Manning Grinnan. Some have gone to Galveston (R. 3022). There are others that I have not named. There has been a substantial volume of concentration that has been thus transferred from the interior to shipside facilities at Houston (R. 3023). With respect to our own plants, in a normal season, taking Dallas for instance, which handles about 100,000 bales, I would say that the amount that has gone to the port would be 5,000 bales. Twenty per cent of that will be due to competition. I should think that about the same number of firms have changed to Galveston as to Houston. I would say that the Cotton Concentration Company at Galveston has gotten a good many of them. The Magnolia Compress has one firm that I recall. I understand that the Magnolia Compress does not have shipside facilities. They were able to take our customer by reason of the general advantages at the port, which were rate advantages. They explained to me that the two rate plan gave them advantages at Galveston (R. 3025). I do not understand the operation of that freight rate, except that there is a condition there of rates that causes our cotton to go their. They tell us that is why they are going there. We have had to deal with competition with concentraitng facilities back from the water front at Houston (R. 3026). Texas City is a port, and has a cotton warehouse and high density compress located close to shipside. I am told that several years ago they concentrated a large amount of cotton; I understand that no cotton is going there now (R. 3027). I do not know why the concentration of cotton disappeared at Texas City. I would not make any distinction here between shipside concentration facilities and facilities that are situated re-

mote from shipside at port. It would certainly be an advantage to the interior compress man to prevent the moving of the concentration to the port and hold it in the interior (R. 3028). He would get the storage and handling of the cotton.

(Substance of the testimony of the Witness EARL FAIN, who testified at this point, deals with the issue of compression, which has not been attacked in these proceedings, and [fol. 619] therefore has not been narrated.)

WITNESS W. S. TURNER

I am Secretary and General Manager of the Arkansas Cotton Trade Association, have held this position since May 29th, 1918, prior to which date I was in the Traffic Department of Railroads since 1904. Among my duties now are traffic and transportation matters in the handling of cotton and assembling and distributing statistical information pertaining thereto. My office is at Little Rock. The Arkansas Cotton Trade Association includes the entire membership of all the cotton exchanges, and trade organizations at the several concentration-compress points thruout the state of Arkansas; the cotton dealers located at such and other points throughout the state; the compresses operating within the state; such Arkansas Banks as make a practice of financing cotton operations and, in a general sense, the farmers and growers of cotton. In other words, I am appearing for the cotton industry of Arkansas. The outstanding fact remains that the commodity must stand the cost. In the Ashdown Hope Ft. Smith & Van Buren Concentration areas, the Frisco protects the through rate via the transit points without concentration penalties. In the northwestern part of Arkansas where our State's cotton traffic is most dense, the Frisco has made a provision for a 5¢ per 100 lbs. penalty on concentrated cotton, exempting from such penalties cotton compressed in transit, which penalty has never found favor with the shippers, and the Frisco is under notice that this provision was accepted only to get some kind of a working arrangement into effect.

We have accepted it under protest as an emergency provision (R. 3117). The industry as a whole in Arkansas seems to demand the concentration of cotton as an economic necessity. We are not large exporters. I believe that 25% would cover the portion which is exported (R. 3120). Exhibit 112 shows the total receipts of each compress point for four season- beginning with 1922 and 1923 and including the current season to date (R. 3121). This Exhibit shows that Arkansas cotton is favorably regarded in the markets of the world, and that our crop can be considered a premium crop as compared with other territory. We see in these proceedings an objective which anticipates the [fol. 620] establishment at ports of markets for cotton, by which Arkansas cotton will lose its identity, and Arkansas producers lose their premium. The fifth and sixth columns of the Exhibit show the capacities of Arkansas compresses as of January 1st, 1921, and again as of January 1st, 1926. They show an increase of 66% in warehouse capacity in five years (R. 3122). There are 34 compresses operating within the state. The location and distribution of them is consistent with the local production of cotton. A Banker of Jonesboro writes that the establishment of a compress at that point makes that a competitive buyer's market instead of a competitive (R. 3144) sellers' market, and this statement may be applied to all interior compress development.

Exhibit #A-113 shows domestic and export rates on cotton from Little Rock to New Orleans, Louisiana, and to Galveston and Houston, Texas, showing a resume of the rates with their variations from the beginning of the 1919 season up to the present time (R. 3125). The two rate plan from Arkansas to the ports is a comparatively recent development (R. 3127). Formerly they operated very successfully on a one rate plan. Exhibit A-114 shows rates on cotton, any quantity, carriers privilege of compression, Little Rock to Dalton, Macon and Gainesville, Ga. There are no through rates from Arkansas to the southeast via New Orleans. We know of no traffic moving from Arkansas to Southeastern Mill Points with routing via New Orleans, and the Exhibit shows that there is no justification for traffic to so move (R. 3128). Exhibit A-115 shows rates on cotton, any quantity basis, carriers privilege of compression, from

Little Rock and Walnut Ridge to Providence, R. I., Chicopee, Mass., and Hartsford, Conn., on direct routing through Mississippi River crossings above Memphis (R. 3129). If the shipper elected to ship it through flat, the rate would be much higher, more than 12¢ higher, since the class rate would apply in eastern territory (R. 3130). The Exhibits indicate that Arkansas cotton would not move in large volumes through the ports to the southeast and New England Mills. The only part that would move to the ports would be the export cotton (R. 3131). Practically none of the ex- [fol. 621] port traffic from Arkansas would move through Texas Ports. We favor the one rate plan. We would not object to increasing the domestic rate, if they would not increase the export rate at the same time, because we ultimately pay the export rate.

Cross-examination:

Several of the concentration points in the southwestern part of Arkansas are almost as near to Houston as they are to New Orleans (R. 3133). Formerly the Missouri Pacific Lines did not themselves serve the Texas ports; and it was their policy to discourage the making of through rates to the Texas Ports, in order that the business might be carried to New Orleans. The greater part of our cotton moving to New England Mills, moves by rail (R. 3134). The development of concentration in Arkansas has been very pronounced in the past ten years. We have no particular complaint to make of the present general rate adjustment and situation in Arkansas. Our dealers claim to feel the effect of the two rate plan (R. 3138), there is always an uncertainty as to just how to figure the rate, and also an uncertainty as to whether or not someone somewhere else is getting an advantage over them, and our desire is to have our charge expressed in one through rate from the point of origin to destination, so that when we make a contract we know just what it is going to cost to get our cotton to destination (R. 3139).

WITNESS W. J. NEAL

I live in Waco, Texas; I have been in the cotton business something over forty years. During that time my experi-

ence has brought me in contact with the marketing, concentration, and compression of cotton in Texas and Oklahoma, particularly in Texas. I am familiar with those operations (R. 3140).

(That part of the testimony of Witness Neal which deals with the issue of compression, which is not in issue in this proceeding, has not been narrated.)

As the volume of the crop increased, notably from 1885 [fol. 622] to 1910, the interior compress industry expanded at a very rapid rate, the value of the service taken in connection with concentration privileges, which followed, was recognized by the rail carrier as a great economy as a saving of expense to them of providing and operating their depot and terminal facilities, rolling stock and motive power, and as a most important factor in Agricultural development. It was the custom*er* for a quarter of a century after the Civil War for the cotton merchants, factors, or others interested in the distribution of the crop, to have a close working arrangement with their correspondent in the cotton spinning or consuming centers (R. 3153). At that time, those outlets were principally in New England, as far as this country is concerned, at Liverpool and other important markets abroad; as the cotton crop increased in size, and the consumption, distribution, and spinning areas widened, it became necessary for the American shippers to establish their own houses, or direct representation in the consuming centers of the world, and to arrange for adequate facilities for the preparation and proper shipping of their cotton from interior locations contiguous to points of production in this country. As a result of this condition, and the demand that it created, the interior concentration and marketing system now in vogue, was evolved. The establishment in the interior of compress plants, and warehouses and other facilities, for the assembling and merchandising of cotton at point of origin, or at convenient locations contiguous thereto, where cotton producing communities could be best served, became an absolute necessity (R. 3154). The establishment of these plants, and the service they provide, has proven a great boon to the farmer, the small cotton buyer, the general merchant, and the local banker in the interior for establishing highly competitive

markets for the cotton itself, and enabling the business of the community to be transacted at home, giving the farmer the cash upon delivery of the bale, and establishing a practical exchange, safe-guarding and rendering each community entirely independent insofar as the marketing of its crop is concerned. Prior to the origination of these institutions, financing and insurance were very difficult to obtain and very expensive, bales of cotton were exposed to the weather for long periods of time, and facilities for storage under cover were all but non-existent (R. 3155). After the wet [fol. 623] season of 1913, there was imperative demand on the part of merchants, bankers, individual farmers, and others, for the establishment of warehouses throughout the interior for the purpose of protecting the cotton from the weather. The compresses made an earnest endeavor to meet this situation, which was only accomplished by the outlay of large capital, and increased equipment and facility cost (R. 3156).

Briefly summarized:

1. Concentration and Compression are necessary links in the chain of distribution and are economical transportation functions, rendering service and savings to the producer, the interior cotton merchant or distributors, the banker, laborer and the transportation interests at large.

2. Due to the changes which occur, with almost certain regularity in cycles of time, and the subsequent requirement (R. 3161) in outlay of capital, it is a hazardous and unstable investment as to plant and property, being in effect a public service.

3. The function of compression and concentration being an inter-dependent and inter-locking service, the impairment of the efficiency of one or the other, would adversely affect and soon destroy the highly competitive interior markets, as they are now established and functioning, and which are of such great value to the cotton interests as a whole.

4. The destruction of the interior markets would turn the calendar back a half-century as it would center the movement at the ports, to the exclusion of the interior and to the great detriment of the producer and to all other interior functions of trade, cotton being the backbone.

The ocean carriers make a difference of 15¢ per 100 pounds between high density cotton and standard density cotton. I do not know what the difference would be between high density cotton and flat cotton; it would be very great (R. 3162). Most of the lines would not accept flat cotton. Based on my experience in the marketing of cotton, I think the one rate plan would tremendously simplify matters, and I think it is the fair way to do the thing. It puts everybody on equality. I think if we could go back to the old days before this 3½¢ thing was introduced, where every- [fol. 624] body knew that a certain price would be paid to put that cotton on port for the purpose of concentrating and reshipping, or aboard ship, if it goes for export, would be a tremendous simplification of the matter. I think it would be beneficial to the cotton industry as a whole (R. 3163). It would be beneficial to the cotton industry as a whole to have free competition of all markets on any equality. The benefits of that would redound to the producer. I am connected with Geo. H. McFadden Agency, which concentrates both at the interior and at the ports. I have given consideration to the construction of shipside facilities at the ports. If there was an advantage at the ports, that would force the cotton there, we would ultimately be compelled to abandon interior concentration. Theoretically it would ultimately force the concentration of all the cotton at the ports; I don't think that would ever actually happen. I think that 18¢ per bale is a matter of vital concern in handling cotton. It would not have been during the war, with the war prices (R. 3165), but the cotton industry now has gotten back where the cost unit is based on the war value on the dollar, 58¢ or 65¢ whatever it may be, and the prices are down to prewar basis. The cotton is handled at present in actual practice on so thin a margin that where you introduce 1¢ or 5¢ or 10¢, that counts somewhere along the line.

Cross-examination:

The illogical location of many compresses was really the result of misguided judgment of the Railroad Commission in adopting the doctrine of compressing cotton at the first point in transit; it gave people that could buy compresses in those days at very much less money the opportunity to

come in and puncture the situation all over (R. 3166). It has happened that a man who had a compress at a given point, who had had his compress cut off from the cotton by having another one established, would in retaliation go down the other side and try to cut them off. The railroads [fol. 625] have not controlled the situation as to where compresses shall be located, except by moral suasion. The railroads for the last two years have seen the folly of having these compresses established at points where the expense and inconvenience are considered (R. 3167). In working out a proper system of location of compresses, in the first place you would locate in point of train operation, and if it was contiguous, not only to local town, but also to the concentration area which it would serve, usually at a junction point. We would usually take into consideration the fact of plenty of track facilities and that sort of thing, and the geographical location would be determined largely by the amount of cotton produced in the area, its trend of movement, and the movement of other transportation or freight trains, particularly at freight divisions and switching points, and switching facilities and all that sort of thing. It would be desirable to have compresses located as nearly as possible at the freight division points (R. 3168). There is not room for many more at the present time. It is not economical to put more than one compress at a small interior market. There is a great difference in the situation today as to the location of compresses and the situation that existed 20 years ago. There has been an immense amount of money spent to re-locate the compresses that have been illogically located (R. 3169).

My company would naturally use the facilities we own rather than send its cotton through somebody elses (R. 3180). A merchant who owns no facility anywhere, who is doing business at the small interior concentration points and can under the present conditions by using the local rates get the cotton to shipside at the 80¢ common point rate, by reason of the fact that steamships will make a lower rate on high density cotton and pay for the high density moving to the port; that is an advantage to the interior merchant. In the natural course of events, where we have our own facility, we have to meet that as a part of our competition in bidding for cotton. Academically, whatever will tend to

cheapen the cost of the distribution of the commodity will inure to the benefit of the producer of the commodity, but in actual practice (R. 3181) I have serious doubts whether the producer would get the benefit of that or not. It would [fol. 626] depend a good deal on who got the advantage. If there was an advantage to a man anywhere along the line and he could keep it, he would do — if he could get away with it. Otherwise he would spend it with the producer or the consumer, whichever facilitated his business. He might cut his profits to the consumer, or he might do it with the compress. But his first inclination would be to put it in his pocket, if he met no competition. If there was competition, he would have to spend it with the producer. The place my company has in Houston is leased from the railroad (R. 3182). It is located back from the water front. As to whether or not the rates should be so adjusted as to give our location back of the water front a less expense location, all of the advantages of the competitor who has spent more, I think that if 99% of the people today were with us in that position, then we ought to be penalized, but I think if 1% today were in that position, the other 99% were not, I doubt if the industry would be properly served by that discrimination in the rates. When we do any business we have to live under competitive conditions, and if we have a competitor who is more clever than we are and he sees these things that we do, we must either follow him in the end, or go down (R. 3183). My view on this question is very largely what is good for the industry, and I do not believe that a discrimination of that kind, even though there may be a theoretical advantage in the location, is the best thing for this industry as it is now constiuted. The backbone of this country is cotton. We must keep that industry going, and whatever rule you make or whatever application or arrangement for the marketing of cotton ought to be so the producer and laborer, and so forth, will get the most out of it. On that theory alone, I think the question of discriminating against the bulk of the trade in favor of a few is a pretty bad proposition (R. 3184). I think, academically, you are correct probably. If we could split halves on these rates, and let every fellow pay as he enters, and get no more than what he paid, if it were possible under

the rate structure in handling a great commodity like cotton to do that, then I think academically and theoretically you are correct about it (R. 3186). But for the good of the industry, and for taking half a dozen locations even though there may be a dozen and saying that we are going to build up these industries by a rate structure that will [fol. 627] tear down the balance, I do not believe in it. It is not my position that the railroad rates ought to be made with a view to equalizing the relative advantages or disadvantages of the relative owners of facilities for handling cotton. My theory is that the great industry upon which transportation, cotton buyers, shippers, and everybody else hangs their hope, must be preserved, and the transportation rules or the concentration privileges should be built upon a basis for that industry, and I believe it is best to have it scattered over the whole. The natural tendency would be, as these advantages accrue, to cover the water front, and you will have them from Houston to Galveston, and as you do, it removes the center of competition and the center of the movement from the country to the ports, and that is not the best thing for the country. All port concentration is attractive. The assembling of small lots of cotton at various compresses in the interior took me to the port in 1913. We moved our cotton quicker. The same thing took me to the port two years ago (R. 3188). We considered the two rate plan very carefully. We saw the advantage that accrued to the water front man. We knew there was 3½¢ involved. We figured our own monetary calculations, that this was new and would have to be only a small proportion of the whole, and just on the basis of common sense and on the basis of balance of power, on the balance of good to the industry, that that thing would have a pretty good run for its money and survive, and we thought under the conditions and the trades that we could make that we could spend money here and bet on the final outcome of this case not making that discrimination hold. We put the plant at Houston because port concentration fitted into our requirements. We put it in Houston on the basis of our being fortunately situated in financing our cotton. We can finance it wherever we want to. It suited our purposes (R. 3189) on certain kinds of cotton to concentrate that cotton at Houston and at Galveston, and we thought there

was an economy in it and we put the plant at Houston and Galveston on that theory. The question of putting the plant in Houston back of the water front as against the water front was based upon the theory that it was a safe bet for us to make to put the plant back of the water front. I should say that the more logical location for the handling of export cotton is on the water front. I say that in reference to the water front at Houston. Where the boats [fol. 628] come to the water front at Galveston, it does not make so much difference, where the boats have to shift. They have not so far done that at Houston (R. 3190). We came down here in 1890-95 and we made a (R. 3193) selection of what we thought was the most strategical location in the interior of Texas, and primarily in Oklahoma. Oklahoma was not so well developed then. We spent our money and we kept 100% of that stock, because it was a good thing. We thought we could get away with it, and we did for a certain time, but we found it was an uphill pull. We had to fight everybody in the whole country, and we found we had to relent on the same theory. We did not go to the water front, and have not yet, because, while we hoped the theory would work in our interior properties, it fell like paper. There is a certain amount the traffic will stand, and you can't go beyond that. Instead of trying to hold 100% of the thing now, we have distributed it around among the people and have made friends in the industry. We had invested our money in the interior compresses, and the situation was parallel to this (R. 3194). If they are rendering an economical service, they will live; if they are not, they will die anyhow. The situation at the ports contemplates concentrating 100% of the business at the ports, and it cannot be done. The facilities at the shipside are not available for concentrating all of the cotton there; they could be made available with enough capital and enough time. If there is no advantage in putting them there, they will not be built (R. 3195). The interior shipper pays 83½¢ on export cotton to Galveston. The rate for compression includes the drayage, and the shipper really pays that (R. 3196). The Galveston Wharf Co. should use the high density compresses and warehouses for the purpose of shipside concentration, it would have the effect of practically destroying the back from the water front properties in Galveston; it

would do the same thing that Houston would do. It would create more or less of a monopoly by the Wharf Co. of ship-side delivery at Galveston. That monopoly does not now exist on account of the back of the water front. Every man would have to go out of business or meet the competition just as he did when Mr. Steel was operating those compresses. It would give the wharf company the chance to monopolize again the interior compress (R. 3197).

[fol. 629] (The testimony of witness GEORGE W. KING, who testified at this point, deals with the issue of compression, and has not been narrated.)

WITNESS R. Q. LEE

I am President and General Manager of the Cisco and Northeastern Railroad, also President of the West Texas Chamber of Commerce, with headquarters at Stanford, Texas. It is an organization promoting the interests of west Texas, that section of Texas west of the 97th meridian (R. 3224). The capital invested in compress facilities in that section of Texas is in excess of $3,000,000, and the annual payroll and expenditures of those facilities is more than a million and a half dollars. They constitute a substantial item in the building up and prosperity of west Texas. There has been a material increase in the production of cotton in west Texas. That has a tendency to increase the movement of cotton longer distances. I think that we need the existing compress and warehouse facilities of west Texas to properly market that cotton (R. 3225). It is the position of the West Texas Chamber of Commerce that they desire to have the cotton concentrated and stored on those facilities in west Texas. Based upon my experience in transportation business in general and as President of the West Texas Chamber of Commerce, I would say that it would be beneficial to west Texas and the cotton industry as a whole to have the freight rate adjustment so made that the interior markets may compete equally with the port markets (R. 3226). I am not a traffic man or a technical man (R. 3227).

WITNESS G. S. WEITZENHOFFER

I am in the banking business at Oklahoma City, and am Vice-President of the Oklahoma Bankers Association; I am authorized to speak for that organization in this proceeding. In the bank I have charge of all commodity loans and all relations with banks who carry accounts with us, as well as some local business. I have had a great deal of experience in the financing of the marketing of cotton (R. 3230). The planting, growing, and picking of cotton is financed by the interior or smaller banks. The majority of [fol. 630] farmers have not sufficient cash after the marketing of their crop and the payment of outstanding obligations to grow another crop without financial assistance. The banks take a chattel mortgage on such live stock and implements as the farmer may have, together with a mortgage on the crop to be planted. Therefore, the banks are a very important cog in the agricultural machinery, and the financing of the crop is a profitable undertaking for the Oklahoma banks. It also favorably affects the cotton growers as wel-. If for any reason the concentration and marketing of Oklahoma cotton were handled at points outside of that State, the adverse effect on Oklahoma banking institutions would be of serious proportions, in that they would lose an outlet for practically all of their surplus funds (R. 3232). The banks would not finance the crop to the extent they do now, if they were to be almost eliminated from the financing of the marketing of it after it is grown and harvested. In my judgment, it is to the advantage of Oklahoma banks, Oklahoma cities, producers of cotton, and of the State as a whole that the concentration and marketing of Oklahoma cotton be conducted in that State (R. 3234). It is the position of the Oklahoma Bankers Association with respect to the present carriers' rules and practices that we would dislike very much to see any rule or practice arise that would move the major portion of our crop to a central or central concentration point outside of that State. We do not believe there is any concentration point at any of the ports having sufficient railway or warehouse facilities to expeditiously handle such a tremendous volume of business, and the resultant congestion would be most detrimental to the (R. 3234) efficient hand-

ling of the crop. We believe further that the banking facilities at those points are far from adequate to take care of such a situation. The Clearing House Associations at those points would make rules providing for a schedule of charges for the handling of cotton documents for such banks outside of those points as participated in the cotton financing, as would practically prohibit the outside banks from any participation in such financing (R. 3235).

Cross-examination:

Within the last few years, we have been compelled to pay to the banks at the port concentration points a charge [fol. 631] or a service fee for handling such documents as we send to them. They justify that charge on the ground that there has been such an increase in the volume of business occurring there that they have found it necessary to make this charge (R. 3236). So would say that if the other banks in Oklahoma of our size finance cotton in the same proportion that we do when given the opportunity, the percentage of the Oklahoma crop financed by Oklahoma banks would run from probably 60 to 75%. That proportion has decreased in the last few years so far as our bank has been concerned (R. 3237). At a meeting of the Oklahoma City Clearing House Association about ten days ago, other bankers made similar observation, that they had noticed a decrease, but did not know what the trouble was (R. 3238). It is true that Oklahoma banks need outside assistance in financing the crop. We do not purchase any cotton paper on cotton that has been concentrated outside of the State. I have no knowledge of any Oklahoma banks doing that (R. 3239). The rates on outside paper are not attractive. Our rates are higher than the rates we would get on paper we bought from other banks. All charges of every character in connection with the marketing price of a commodity are borne by the producer (R. 3240). Anything that reduces that charge is a benefit to the producers and ought to be done.

WITNESS A. J. STONE

I am Manager of the Transportation Bureau of the Dallas Cotton Exchange; I live at Dallas. I have had

about twenty years' experience in the freight traffic department.

Mr. Fulbright: We admit the qualifications of the witness.

My Exhibit No. A-117 is a sketch which shows the discrimination in the charge for transportation that exists in favor of the water front concentrator at the ports under the current two rate plan (R. 3242). I prepared this exhibit, and it is true to the best of my knowledge and belief. I would say that it is geographically correct, but I think it will fully illustrate the points I want to bring out. My Exhibit No. A-118 shows a comparison of rates which will clearly demonstrate just how this discrimination comes about in favor of the water front concentrator to the preju- [fol. 632] dice of the back from the water front concentrator at the ports, on the one hand, and the concentrator at interior compress points on the other hand. I prepared this exhibit, and it is true and correct to the best of my knowledge and belief (R. 3243).

Under the present adjustment, the interior concentrator concentrating his cotton at Dallas, for instance, and reshipping through the Texas ports on a through export bill of lading or on a local bill of lading for export, is compelled to use the inter-state rate of 83½¢. The merchant who concentrates his cotton in a warehouse back of the water front at the port forwards his cotton (R. 3244) from point of origin to point of concentration on the Texas intrastate rate of 80¢ and may either deliver the cotton to shipside at cost not to exceed 3½¢ or deliver it to the railroads for delivery at shipside and pay the export rate of 83½¢. In either event, the back from the water front concentrator pays a total of 83½¢. The concentrator who gathers his cotton together in a water front warehouse or facility at the port under the current adjustment pays the Texas intra-state rate of 80¢ from point of origin, which, under a ruling of the Texas Railroad Commission applies for local delivery at all points within the ports, including shipside warehouses. The water front concentrator, having no additional cost for delivery to shipside, therefore pays only a total rate of 80¢, giving him an advantage of 3½¢ per 100 pounds over both the concentrator in the in-

terior and the concentrator at back of the water front facilities. It is this 3½¢ advantage that has materially reduced concentration of cotton at interior points and makes it necessary for the discrimination to be removed if the interior facilities are to survive (R. 3245).

The 3½¢ discrimination plays the same part in the case of second concentration as in the case of first concentration. The interior concentrator who buys cotton at Van Alstyne, Texas and concentrates it at McKinney the first time, after which it is concentrated at Dallas, from which point it is forwarded to the ports on a through export bill of lading or on a local bill of lading for export, is compelled to pay the export rate of 83½¢, and in addition he must pay 3½¢ for the second concentration at Dallas. This makes his total charge for delivery to shipside 87¢ under the present adjustment today (R. 3246). The concentrator back of the water front at Houston or Galveston, [fol. 633] on the other hand, gets the Texas intra-state rate of 80¢ on the through movement from Van Alstyne to Houston and Galveston, with first concentration at Dallas. His cost for making delivery to shipside either in cars by switch movement or dray approximately 3½¢. He does not file a concentration claim because if he did the carriers would apply the export rate of 83½¢, and in addition would exact 3½¢ for the second concentration privilege at the port. His total charge to shipside is 83½¢, as compared to a charge of 87¢ to the interior concentrator, there being a second concentration in each case (R. 3247). In the third place, the concentrator in a water front facility at the port also has the advantage of using the Texas intra-state rate of 80¢ from origin to his plant on the water front with first concentration at an interior point, but he is in a position to make delivery to shipside by reason *hif* shipside location without additional cost. His total cost of transporting the cotton from origin to the interior to shipside is therefore 80¢. The respective standing, therefore, under the present rate adjustment is as follows: The water front concentrator pays 80¢; the concentrator back of the water front at the port pays 83½¢; the concentrator at interior points pays 87¢.

Under the one rate plan this situation would be materially changed, as the interior man would be given an equal

opportunity with the back of the water front concentrator at the port, but both of them would still be at a disadvantage with respect to the water front concentrator. Assuming that under the one rate plan a rate of 83½¢ is adopted on cotton previously concentrated, which is concentrated the second time at Dallas, the total charge to make delivery at shipside will be 87¢. As to the concentrator back of the water front who purchased his cotton in the interior, which has already been concentrated and on which there should be a second concentration charge at the port, he would (R. 3248) pay a rate of 83½¢ in the first instance. If he assumed the cost of delivery to shipside, which would be approximately 3½¢, his total cost would be 87¢. If he elected to let the carrier make delivery to shipside and file a concentration claim, the carrier would apply the export rate of 3½¢ and collect a second concentration charge, which would make a total charge of 87¢. The concentrator [fol. 634] in the water front facility, under the one rate plan would have to pay the 83½¢ from origin point with first concentration at an interior point, but there would be no additional charge to make delivery to shipside because of his shipside location. The relative standing, therefore, of the three concentrators on second concentrated cotton, under the one rate plan would be as follows: the water front concentrator would pay 83½¢; the back of the water front concentrator would pay 87¢; the interior concentrator would pay 87¢ (R. 3249). It is therefore apparent that the interior concentrator under the one rate plan would have his position improved with respect to the water front concentrator to the extent of 3½¢ and would be placed upon an equal footing with the back of the water-front concentrator on second concentrated cotton. That applies to second concentrated cotton; on first concentrated cotton all three facilities would be equalized and would be paying the same rate in cents per 100 pounds to the shipside. Such an adjustment would enable cotton merchants to concentrate in the interior, which many of them desire to do, and at the same time it would build up interior facilities to the postion they once occupied in the concentration of cotton produced in this territory.

The port concentrator has another advantage when it comes to second concentration, by reason of the fact that

he can avoid the payment of the second concentration charge of 3½¢ altogether. This is done by the manipulation of freight bills, using freight bills in his claim covering cotton that was not previously concentrated and substituting freight bills covering cotton that was previously concentrated, the latter being cancelled by the Western Weighing & Inspection Bureau as representing cotton [fol. 635] placed on vessels at the port. The concentrator in the interior can not do this in cases where cotton has been previously concentrated, because the only disposition he can make of his cotton is to re-ship it via rail and then only via the line that hauled the inbound shipment. As no cotton is disposed of locally at (R. 3250) interior concentration points, and the interior concentrator must re-ship it via rail lines in protection of through rate origin to destination, he has no way to escape the second concentration charge. This discrimination would be eliminated under the one rate plan except as to water front concentrators.

Not only does the port concentrator have what we consider an unlawful advantage over the interior concentrator as concerns the difference between the local Texas rate and the through export rate, being 3½¢, but he has an advantage by reason of the absence of a penalty for moving [fol. 636] flat or uncompressed cotton from points of origin through to the port. I here submit an exhibit showing the situation under the present two rate plan, and what it would be under the one rate plan, assuming that the application of a penalty of 12¢ for local intra-state application will be applied the same as is done for inter-state application. If the interior man is going to be subjected to a penalty for passing the compress, we want the port man and everybody else to be subjected to the same penalty (R. 3251). I know of a good deal of cotton moving on the inter-state rate that has today to pay this penalty of 12¢. Almost every day in the cotton season, we have cases where it is necessary to apply this 12¢ penalty on cotton concentrated at Dallas and other points. That is one of the things that interferes with the concentration in Dallas. If we had the same privilege of bringing flat cotton to Dallas for concentration and storage as the ports have, it would probably double the amount of business they do

at Dallas at the warehouse (R. 3252). The water front concentrator at the port can and does avoid the payment of the penalty of 12¢ for passing compresses, because the intra-state rate is applied from origin to his water front warehouse. If, however, cotton is moved past an interior compress and concentrated at Dallas, for instance, the 12¢ penalty rul- is invoked on the outbound shipment, if made on a through export bill of lading or a local bill of lading for export. The concentrator back from the water front also has this advantage. That is another reason why a cotton merchant avoids interior concentration. All of the testimony so far given by witnesses Dalzell and Clayton in making their comparisons with the interior has cited unlike cases, for instance, comparing second concentration at the ports with first concentration in the interior and comparing cotton reaching the port compress with cotton reaching the interior compress flat. My comparisons deal with concentration in the interior for the first time and concentration at the ports for the first time, and with second concentration in the interior and second concentration at the ports. Discrimination can only be shown in this manner (R. 3253).

A discrimination under which the interior concentrator labors is due to the freedom the port concentrator has in the use of freight bills available by reason of cotton being placed on vessels at the ports and the reciprocal routing [fol. 637] privileges he enjoys. A concentrator at interior points must watch his inbound and outbound shipments via various lines religiously in order to avoid losing his concentration privilege. At Houston there are so many ways by which a concentrator can employ his inbound freight bills that he seldom ever loses a concentration privilege.

Another advantage which the port concentrator has over the interior concentrator is due to the fact that the bulk of cotton to foreign destinations is sold upon terms which require a steamship bill of lading. Obviously the port concentrator who has a large stock of cotton on hand at the ports is in a position to get a bill of lading to be attached to the draft much sooner than the interior concentrator (R. 3254). There has been a great deal of testimony in this record to the effect that the interior concentrators and facilities have no use for second concentration or the privilege of passing compresses without penalty. Nothing could

be further from the truth, because so long as the port merchants and concentrators can avoid the 12¢ penalty for passing intermediate compresses and the 3½¢ difference in the rate, these things will be necessary in the interior, in order to put interior merchants and concentrators on a parity with port merchants and concentrators. We do not advocate the cancellation of the 12¢ penalty or the 3½¢ charge for second concentration. But under the two rate plan in effect today the advantage of avoiding these additional charges gives the port concentrator such a tremendous advantage over the interior concentrator that the concentration business in the interior has gradually declined from the season 1913-1914 to the season 1924-1925 to where (R. 3255) today the amount of concentrated cotton in the interior is approximately 30% of the total, whereas for the 1913-1914 season it was 75%. This decline in interior concentration began with the two rate plan, which went into effect September 18, 1917, and continued, but at a more rapid rate, with the opening of the shipside facilities at Houston in 1923.

I am testifying for the Dallas Cotton Exchange, which consists of about 150 members, and those members compose about 65 firms who actually buy, sell and ship and concentrate cotton. Anderson, Clayton & Co. and George H. McFadden Bros. are members of the Dallas Cotton Exchange, but they are represented here by other witnesses, and I do not attempt to speak for them except to the ex- [fol. 638] tent that they accept what I say (R. 3256).

I do not believe there has been any change in the situation since this case was heard in October, 1923. I do not think there is a new condition which justifies a continuance of the two rate plan. The fact still remains that cotton is still moving from the interior to those shipside facilities on an 80¢ rate and our shippers who concentrate in the interior are having to pay 83½¢, and that is what we are complaining of and is the discrimination which we think should be removed. There are no differences in the transportation service under the two rates (R. 3257).

Exhibit A-119 is based on the theory that if we have a one rate plan, the same penalties and charges will attach to intra-state shipments as to inter-state shipments. We think it ought to be intra-state as well as inter-state and

then everybody would be on equal footing, the exact rate tariff so far as through rate is concerned. What I wanted to show was that under the one rate plan there is a way to fix this thing up, an ideal way, not only as to intra-state traffic, but the inter-state traffic as well, and everybody will pay the same rate to shipside. We think it ought to be done that way (R. 3260). In my experience in making rates, I do not recall any other commodity except cotton where the export rates are made higher than the domestic rates, conditioned upon the additional free time allowed at the port on export traffic. Waiver of second concentration penalty on cotton handled by back from the water front port concentrators might benefit the interior facilities very materially, yet it does not bring about as full an equalization as far as the interior shipper is concerned as if the second concentration charge is assessed.

[fol. 639] Exhibit A-119 shows that under the present two rate plan, on a bale of cotton originating at Van Alstyne, passing a compress at McKinney, coming to Dallas to be concentrated and ultimately shipped on through bill of lading or port export bill of lading, the interior man would pay 95½¢. The port waterside man obtaining identically the same service and passing the identical press at McKinney, would get at the water front for 80¢, a difference of 15½¢. There is no reason from a transportation standpoint or from any standpoint why the man at the shipside should have such an advantage (R. 3264). I do not know of any practical reason why a man should want to pass the compress at McKinney (R. 3265).

Cross-examination:

I do not think there would be much economy from the railroad standpoint in stopping at Brenham to compress when the destination is only 70 miles way. The shipper may want to stop the cotton there for some reason or other.

I did not mean that there was anything illegal in the manipulation of freight bills at Houston; I think it can be done under the tariff, but the tariff is loose. A man can concentrate cotton at Houston from all over the State, in [fol. 640] fact, from all over the southwest practically, and then ship it out to and through Galveston on any line's bill of lading (R. 3268), and he does not have to be so care-

ful about his re-shipping and then he can file a claim against the inbound line and that claim will be paid. The interior man can not do that; he must ship out always over the same line he came in on (R. 3269). At Houston they can take the bills on the so-called penalty for passing the compress at Brenham and can kill that against the steamship, swap them over on another billing, and go on out without that penalty. I think they can do that; there is nothing to keep them from doing it under the tariff. I do not know whether they actually do it or not. (R. 3270). The Bureau system of checking freight bills gives quite a lot of latitude and permits a shipper to do pretty much as he pleases. I get that information from experience. Our shippers do exactly like the shippers at the ports do. They scheme around and get rid of the freight bills that are of the least value to them (R. 3271). Some of our Dallas shippers concentrate cotton at Dallas or other interior points and ship it in to Galveston to the warehouse back of the water front and have them high density it and carry it to the front. I think where they have cotton in the interior concentrated here they invariably ship it to its final destination from Dallas wherever it is possible to do so. If it is going out on a vessel from Galveston and they have it concentrated in Dallas, it would be cheaper for them to ship it under local bill of lading, have it handled by Kempner's compress at Galveston, high density it and put to the vessel, so far as the freight rate is concerned (R. 3272). So far as the total cost is concerned, I do not understand that it would be cheaper. They would pay 80¢ into the back of the water front warehouse, and then they would pay something in the neighborhood of 18¢ a bale to get it over to the ship. That is about the same as they pay for shipping it through [fol. 641] export bill of lading. The standard density bale of cotton that would be shipped to Mr. Kempner would pay 75¢ for high density which would include the drayage to the ship. The shipper would get back 15¢ per 100 pounds on the ocean freight rate (R. 3273). There is a substantial movement from Dallas that is shipped to the back from the water front compresses, and that is all because of the two rate plan. They feel that they have to do more or less of that for the protection of their own interests. They do not want to do it. Very few of them are using the through

export bill of lading now (R. 3274). Its use has declined appreciably in the last two or three years, but I do not think that the freight adjustment had anything to do with that. Trade conditions and the contracts with foreign spinners which require a ship's bill of lading are responsible. A shipment can be moved from Dallas at the present time [fol. 642] to shipside at the 80¢ rate. At the Alexander-Sprunk Warehouse, the 80¢ rate would be applicable right up in front on the same track where he unloads all of his cotton. Whether it is applicable or not, they are applying it. I do not know whether it is legally applicable. If a shipment of cotton moves into Greenville, Texas, for concentration, is there given first concentration, and a man in Dallas wants to purchase that cotton and ship it to the port at Galveston, and a man back of the water front at Galveston wants to buy that cotton, there would be some advantage in the man at Galveston having a free second concentration privilege. I do not know of any advantage to the man at Dallas. If the man at Dallals paid 3½¢ for his second concentration, and the man back of the water front had the freight paid for it, I would say that there would be discrimination, just as there is today on second concentration at the port.

WITNESS I. M. GRIFFIN

I am Traffic Manager for George H. McFadden Bros. agency and Neil P. Anderson & Co. with headquarters at (R. 3278) Houston, Texas. I have held that position since August 1, 1918. I entered the services of the International and Great Northern Railroad in 1893, beginning my work in the interior, and in 1900 I went to Houston, Texas, as Chief Clerk. Later on I was sent to north Texas as agent for the Missouri-Kansas & Texas, and Texas & Pacific, and I. & G. N. at Mineola, Texas, remaining there four and one-half years, returning to Houston as local freight agent of the International and Great Northern and Galveston, Houston and Henderson Railroad; I remained there about a year and a half and was sent to Galveston as joint agent for the Galveston, Houston and Henderson, Missouri, Kansas & Texas, and International and Great Northern, remained there until 1909, at which time I was (R. 3279) ap-

pointed General Cotton Agent for the International and Great Northern with headquarters at Ft. Worth, Texas. I specialized in the handling of cotton for that railroad, remaining at Ft. Worth, and later was appointed Assistant General Freight Agent of the Texas & Pacific Railroad in connection with my work with the International and Great [fol. 643] Northern, and shortly thereafter was appointed General Freight agent of the Texas & Pacific Railroad, moving to Dallas and later was appointed Freight Traffic Manager of the Texas & Pacific, which position I held until I resigned to go with George H. McFadden & Bros. Agency at Waco, Texas. During my service with the Texas railroads, it was a part of my business to specialize in cotton rates and the handling of cotton through the Texas ports.

The firm, George H. McFadden & Bros. Agency and Neil P. Anderson & Co., whom I represent in these proceedings, buy and ship cotton in large quantities. For the season of 1924-1925, approximately 500,000 bales, not including Louisiana and Arkansas. They are cotton merchants and buy cotton at points of production, also at points of assemblage or concentration, including cotton concentrated at the ports. They sell cotton and make (R. 3280) shipment against such sales from points where cotton is available from their stocks. The principal points of asesmblage or concentration are at Houston and Galveston, which are cotton markets as well as deep water ports. The larger portion of their purchases move to Houston or Galveston for warehousing and concentration and subsequent reshipment. A part of the cotton purchased by them is shipped direct from interior points of origin or concentration to shipside for export or coastwise movement or by all rail to domestic and Canadian mills.

Cotton warehoused at Houston for account of George H. McFadden and Bros. Agency and Neil P. Anderson & Co. is usually handled at the Southern Compress & Warehouse Company's plant back from the water front. Plant No. 1 of the Souther- Compress & Warehouse Company is located on the Harrisburg Boulevard, just within the I. & G. N. Congress Street yard. Plant No. 2 is located in the Fifth Ward, northeast of the Hill Street bridge. Receipts beyond the capacity of these two plants are taken care of at various public compresses and warehouses at Houston.

This season the facilities at Houston of the Exporters' Compress Company and the Shippers' Compress Company were employed in addition to those of the Southern Compress & Warehouse Company. All of the above mentioned plants are back from the water front and cannot effect direct shipside delivery. Delivery of cotton to these plants [fol. 644] at Houston is made on the basis of the 80¢ (R. 3281) inbound rate from Texas common points, as per Texas Lines Tariff 17-D I. C. C. 135, and $1.01 from Oklahoma common points, as per Southwestern Lines Tariff 80-G I. C. C. 1776, and from these plants to shipside on basis of the railroad car switching services, $8.10 per car, I. & G. N. 2353-L, I. C. C. 855 plus compress charges of 10¢ per bale for topping in order to get maximum loading, and charges at the wharf front for unloading from the cars and delivery to the ships at shipside, as per Texas Lines Tariff 21-G I. C. C. 175. The above cost of delivery to shipside, both export and coastwise, are in addition to the railroad charges for local delivery to the warehouse and are borne by the owners of cotton and are in addition to intra-plant service cost for breaking out of store, trucking, loading, except topping.

I prepared Exhibit No. A-120, and it is true and correct to the best of my knowledge and belief (R. 3282). It shows the transportation cost of one bale of cotton weighing 525 pounds to reach shipside at Houston and at Galveston, when shipped direct from interior Texas common points to shipside and when shipped from interior Texas common points to Houston and Galveston and handled at warehouses and compresses at the ports and subsequently delivered to shipside at such destination. The costs shown are exclusive of wharfage and under the rule of two rates as now in effect and comparative with one rate for all deliveries as per order of the Interstate Commerce Commission in Docket No. 14940. The exhibit shows comparative total costs per bale of cotton moving direct to shipside from points of origin (Texas common points) and from points of origin (Texas common points) to Houston and Galveston, stored and subsequently delivered to shipside. The storing in warehouse and subsequent delivery to shipside, or re-shipment from the storage points, contemplates as a maximum transportation charge the protection of the same

through rates and charges as apply on a direct shipment from point of origin to final destination. As shown in example No. 2, it costs $4.3837 to deliver direct to shipside at Houston, and/or Galveston from Texas common points one bale of cotton weighing 525 pounds on the basis (R. 3283) of the rate of 83½¢ per 100 pounds, which is in ef- [fol. 645] fect at the present time. Where cotton is moved from the interior to the same points of destination, but delivery is made to warehouses on the basis of the 80¢ rate, and is subsequently delivered to shipside, the total transportation costs per bale are in all cases less than $4.3837, the cost of movement from interior direct to shipside.

Example No. 1, water front plants that can effect shipside delivery reach shipside at a net transportation cost of $4.1475 per bale.

Example No. 3, back from the water front plants make delivery to shipside by switching service, standard compressed bales at a net transportation cost of $4.3259 per bale.

Example No. 4, back from the water front plants delivery being made to shipside by railroad switch service, high density compressed bales, at a net cost of $4.2935 per bale.

Example No. 5, water front plants that cannot effect direct shipside delivery, but can make delivery to barges on the waterfront, net cost, $4.3175 per bale.

Example No. 6, back from the water front plants at Galveston, delivery from such plants to shipside being made by dray under contract at a net cost of $4.3275 per bale (R. 3284).

Therefore, the transportation cost of reaching shipside from water front plants that can effect direct shipside delivery without switching, draying, or barging, is $4.1475 per bale as compared with $4.3259 per bale, the transportation cost of reaching shipside from back of the water front plants on standard compressed bales, or a less cost of approximately 18¢ per bale, and $4.2935 per bale on high density compressed bales, or a less cost of approximately 15¢ per bale. Water front plants that cannot effect shipside delivery are at a disadvantage to the same extent where car switching is employed. Where delivery is made by barges, the comparison is $4.1475 per bale with $4.3175 per bale, or 17¢. At Galveston, the comparison is $4.1475 per bale with $4.3275 per bale, or full 18¢.

At Galveston, cotton for George H. McFadden & Bros. [fol. 646] Agency and Neil P. Anderson & Co., when for local delivery, is delivered to the plants (No. 1 and No. 2) of the Southern Compress & Warehouse Company, which are located back from the (R. 3285) water front and cannot effect direct shipside delivery, and cost of shipside delivery, both for export and coastwise, are as shown in Exhibit No. A-120 and are in addition to the transportation charges for local delivery to the warehouses and intra-plant service costs for breaking out of store, trucking, loading, or delivery to drays. The intra-plant service of the back of the water front warehouses and the interior warehouses covering the service of breaking out of store, trucking from store to loading platforms and warehouse, loading into cars or delivery to drays, is comparable with the intra-plant service of the water front facilities for breaking out of store, trucking from warehouse to ship's berth, from which the total expense is borne by the steamship representatives. In my opinion, the cost to the back of the water front plant for breaking out of store and trucking and loading into cars is much greater than the cost of breaking out of store and trucking to ship's berth at the water front. In addition to that, the back of the water front man pays approximately 3½¢ per 100 pounds to reach shipside which expense, whatever it may be at the water front, is borne by the steamship. Shipments direct from the interior for export or coastwise movement for account of George H. McFadden & Bros. Agency and Neil P. Anderson & Co. are assessed with shipside rates, which are, exclusive of wharfage, from 3¢ to 3½¢ per 100 pounds higher than the (R. 3286) rates assessed for local delivery.

In making delivery to shipside from plants at Houston and at Galveston, all cotton owned or controlled by George H. McFadden & Bros. Agency and Neil P. Anderson & Co., the costs of delivery to shipside are in addition to the local delivery rates, which aggregate costs, based on present rates per car, for switching to shipside and unloading at shipside, on account of unloading allowance at the ports of 1¢ per 100 pounds on local delivery cotton, are slightly under the total cost per bale of moving cotton direct from the interior to shipside and are in excess of the cost of delivery to plants on the water front that effect shipside [fol. 647] delivery without drayage or switching, in the

amount that it costs to move the cotton from such plants back from the water front to shipside at private plants on the water front at Houston that effect direct delivery to shipside or at public wharves. The unloading allowance of 1¢ per 100 pounds from the carriers is made only when the privilege of concentration is not used and where cotton is not compressed at Houston or Galveston at carriers' expense. Under the one rate plan the back from the water front cotton must exercise the privilege of concentration and re-shipment in order to secure refund of cost of delivery to shipside.

Three cars of cotton, one originating in Houston for switch movement for shipside delivery, one originating in the interior consigned to Houston locally for local delivery, and (R. 3287) one originating in the interior consigned through on a through bill of lading, or on an export bill of lading destined to shipside, and to a water front plant that effects shipside delivery. All three of these cars frequently are placed for unloading on the adjacent tracks at the Houston ship channel for unloading on to the facilities located at the ship channel. In other words, cotton originating at a back of the water front facility at Houston, loaded in a car and switched to the ship channel for delivery to shipside and cotton originating in the interior moving on a local bill of lading, destined to a facility on the ship channel and cotton originating in the interior, shipped on a through bill of lading or an export bill of lading, delivered to a facility at the ship channel, are usually placed on immediately adjacent switch tracks at the ship channel facility for unloading. I am referring to the facilities of the Houston Compress Co. or Alexander-Sprunt & Co. The cotton from the interior on a through bill of lading to shipside and the cotton in switch movements pay additional transportation charges for the same transportation service over the cotton consigned to Houston for local delivery. The comparative costs for these services are shown in my exhibit (R. 3288) No A-120.

In Houston and at Galveston there are less switch moves and less transportation services made in making delivery to warehouses back from the water front than in making delivery to plants at Houston located on the water front

that can effect shipside delivery. As example, we are taking three cars arriving in the same train, first car con- [fol. 648] taining cotton from the interior direct to shipside, at Long Reach, second car containing cotton from the interior for local delivery to the Houston Compress Company's Long Reach plant, and third car containing cotton for local delivery to the Southern Compress & Warehouse Co., back from the water front. These plants are each located on the International-Great Northern Railway, and the switching and delivery is performed by that same railway. I had Exhibit No. A-121 prepared, and from my knowledge of the Houston Terminal situation, it is approximately correct (R. 3289). On arrival at Houston, the train would be stopped in the I-GN North Yard, symbol 5 on Exhibit A-121, where it would be broken up and the cars classified. The same three cars would be brought together from the I-GN North Yard to their Congress Street Yard, symbol O in which is located the plant of the Southern Compress & Warehouse Co. There the car for delivery for the Southern Compress & Warehouse Co. would be placed for unloading at the plant, which is located in the Congress Street Yard. The car for local delivery to the Houston Compress Co.'s Longreach plant, and the car for shipside delivery at the same Longreach plant, would, after re-classification, be taken by another engine from the Congress Street Yard, symbol O, out to the I-GN Yard on the ship channel, known as Booth Yard, symbol 8, and would there be held until ordered placed for unloading. In other wards, the movement would first be from Symbol No. 5 to Symbol O, on Exhibit A-121, and at symbol O, there would be another re-classification, and then there would be a movement similar to a line haul by the International-Great Northern from symbol O, on Congress Street, about seven miles down to the ship channel, or whatever distance it happens to be, and the cars would again be placed in Booth Yard, symbol 8. That would be a switching movement for a distance of approximately not more than 5 miles, from symbol O to (R. 3290) symbol 8. Then it would be put into Booth Yard for re-classification again. That would be a third classification of those cars. Then they would be classified and moved from Booth Yard into the Longreach plant, symbol P, and placed for unloading. If

there should happen to be any flat cars going to Houston to the Houston Terminal Railroad, which has connection with the I.-G. N., those cars would be placed on interchange track down at the ship channel, and the port terminal railroad would take those cars off to symbol 7 on Exhibit A-[fol. 649] 121. There they would break them up again and place them in the switch, such as the Turning Basin Compress, a plant served by the Port Terminal (R. 3291) Railroad. The cars for shipside delivery and for local delivery at the Houston Compress & Warehouse Company, Longreach plant, and at the Ship Channel Compress Co., symbol Q, Alexander Sprunt & Son, would be placed on immediately adjacent tracks for unloading. Alexander Sprunt is marked Symbol T on the legend, and the Q that is shown on the Channel here is the plant of Alexander Sprunt, therefore where it shows T, Alexander Sprunt & Son, that T should be erased and Q instead. A charge of 4¢ per bale, which is absorbed by the railroads out of the rate, is made by the Houston Compress Co. (Anderson Clayton & Co., operators), and the Ship Channel Compress Co. (Alexander Sprunt & Son, operators), for unloading the direct movement from the interior to shipside and for delivering to steamship agent at shipside or within the usual distance, 200 feet from ship's tackle. The cars containing local delivery cotton and shipside delivery switch movement cotton would be unloaded by the Houston Compress Co., or other shipside facility for account of the owner of the cotton, the latter at a charge of 4¢ per bale. Where the cotton was unloaded by the Houston Compress Co. for the owner on local delivery cotton, the railroads would absorb 1¢ per 100 pounds unloading (R. 3293). In other words, on the domestic rate of 80¢, the railroads absorb the same unloading allowance or a greater unloading allowance than they do on the through bill of lading traffic. This would go to the owner of the cotton. The compress facility would unload it for the owner and charge him for unloading it, and the owner would obtain 5¼¢ per bale from the carriers as an allowance for unloading. On the through bill of lading cotton, the carriers would absorb the cost of unloading, not to exceed 4¢ per bale.

There would be two less switching moves and less service performed in placing the cotton at our plant back from the

water front in the Congress Street Yard, and one less move in placing cotton at our plant back from the water front in the 5th Ward, than there would be in placing the cotton for local delivery at the Longreach plant of the Houston Compress Co. However, the rate for the transportation [fol. 650] service is the same in each instance. On the two cars originating in the interior and going to the Houston Compress, Longreach shipside facility, one for local delivery to the Houston Compress Company and one on a bill of lading marked for export, the transportation service performed by the carriers would be identical and there would be no difference in the transportation cost to the transportation lines in making delivery (R. 3294) to the Houston Compress Company of the shipment on the local Texas intrastate rate than the cost of making delivery to the same facility of a car of cotton moving on the inter-tate 83½¢ export rate. When the cotton is moved from our plants back of the waterfront, from all of which we cannot effect shipside delivery, an additional transportation charge of 3¢ to 3½¢ per 100 pounds, exclusive of wharfage, is made by the carriers and paid by us in effecting delivery to shipside at the Longreach plant of the Houston Compress Co. and to other private plants and public wharves that effect shipside delivery. At the present time, under the present basis of switching and unloading charges, the cost of delivery from back of the waterfront plant to reach shipside is borne by the owner of the cotton, said owner has recourse to concentration claim privileges by the assessment by the railroad of shipside rates, which are 3½ to 3½¢ per 100 pounds higher than the local delivery rates, but because such delivery costs are the same or so nearly the same as the amount representing the 3¢ or 3½¢ per 100 pounds additional rate over the local delivery rate, the owner does not exercise the concentration privileges.

I desire to make reference to some testimony in the record on page 1544, of recent proceedings at Houston, with reference to the 1¢ unloading allowance, and in order to (R. 3295) make this clear, I desire to introduce Exhibit No. A-122, exact copies of the items contained in the tariffs dealing with this question. I prepared Exhibit A-122, and it is true and correct to the best of my knowledge and belief.

On domestic cotton going to a shipside facility, where the domestic rate of 80¢ would be applied, the items shown in this exhibit would obligate the carriers to assume the cost of unloading to the extent of 1¢ per 100 pounds, or approximately 5¢ a bale. I do not know of any contemplated change in this item by the carriers when the one [fol. 651] rate plan is finally approved. Under the one rate plan, the shipside facility would not lose this 1¢ unloading allowance, and should the one rate be made 83½¢, as testified to by Mr. Clayton, on page 1544, it would not (R. 3296) mean that the shipside facility would have a total cost of 84½¢ per 100 pounds, including the cost of unloading, for the reason that at the shipside facility on cotton going direct to ships berthed at this facility the railroads would continue to absorb the 1¢ unloading allowance and there would be no difference as between this and the carriers' practice of absorbing the unloading on a through bill of lading or ships cotton under the one rate plan. At the present time, the carriers are paying at Galveston 5½¢ per bale for unloading through bill of lading cotton or ships cotton, and 4¢ per bale for unloading the same character of cotton at Houston.

In actual practice, at the present time few concentration claims are filed on cotton switched from back of the waterfront to shipside at Houston or Galveston, because of the two rate plan being in effect, and under the one rate plan, when it goes into effect, on all cotton which has been previously concentrated there would be no concentration claims filed at Houston or Galveston, consequently on this character of cotton the facilities would be entitled to receive, under the one rate plan, the allowance of 1¢ as set forth in Exhibit A-122. Under the one rate plan, cotton which would receive concentration for the first time at Houston and forwarded to shipside by rail, through either a back of the waterfront (R. 3297) or waterfront facility for export, the carriers would apply the one rate fixed for export movement and would deliver that cotton to shipside, absorbing the cost of unloading at shipside, the same as they do now and would do on through bill of lading or shipside cotton from the interior. So it is apparent that both the waterfront and back of the waterfront facilities at Houston and Galveston will be on a complete parity with

the interior under the one rate plan, both as to domestic traffic and export traffic, comparing like with like, that is, comparing the receipt and handling of flat cotton at the interior with the handling of flat cotton at the port, and comparing the handling and receipt of compressed cotton at the interior with the handling and receipt of compressed cotton at the port. I think Mr. Clayton was lead into error [fol. 652] in his statement because of the fact that he compared unlike things. That is, he compared the receipt and handling at the port of previously compressed cotton with the receipt and handling of flat cotton in the interior. In order to make this clear, we will take a shipment of flat cotton originating at Rockwell and compressed at Dallas. Here the compression allowance, as shown on Exhibit No. A-122, would include the cost of unloading. Take a bale of cotton originating at Crockett, moving flat to Houston, there compressed in transit and moving thence to Galveston. Here the carriers would absorb the cost of unloading out of the compression allowance (R. 3298) at Houston, just the same as they would at an interior point. There is no difference in the application of the tariffs on like commodities.

Now, comparing the receipt and handling of compressed cotton at the port versus the interior, I find that cotton, we will say, originating at Cumby, compressed at Greenville, stored and concentrated at Dallas, the interior facility would have to bear the cost of unloading this cotton into the facility at Dallas and the cost of loading it out, as per the items shown in Exhibit No. A-122. In other words, the interior facility in that instance would not obtain any part of the compress allowance with the cost of unloading and loading the cotton out. The same bale of cotton originating at Cumby, compressed at Greenville, and received by a Houston waterfront or back of the waterfront facility, there would be an allowance of 1¢ per 100 pounds for unloading by the carrier to the Houston facility, provided it did not take advantage of the concentration in transit privilege. There is no allowance to the interior facility regardless of whether or not it takes advantage of the concentration privilege on compressed cotton. So in actual application of the items shown in my Exhibit A-122, using like commodities, the discrimination is (R. 3299) against

the interior and in favor of the port, so far as the 1¢ unloading allowance is concerned.

Among the objections advanced in opposition to the one rate plan, references have been made to the dire extremity a cotton merchant would find himself in in having only 100 bales of cotton at a warehouse at the ports which he desired to deliver to shipside, but on checking his records found that the cotton may have been received over five of the [fol. 653] seventeen railroads serving the Port of Houston, and on account of the cotton not arriving at Houston over one railroad he would, under the one rate plan, be unable to make delivery to shipside.

We cannot believe that this objection has been raised without the objectors having carefully considered Item 41 of Texas Lines Tariff No. 29-D, I. C. C. 190, inter-state Rules and Regulations governing the compressing and concentration of cotton and cotton linters. The item is as follows:

(a) Cotton or cotton linters concentrated at Houston, Galveston or Texas City may be reshipped to Galveston or Texas City (also to Houston Docks or wharves, municipal or private, when concentrated at Houston, for trans-shipment by vessel to foreign destinations, or to points in the United States, Canada, or Mexico, where rates are legally published via Gulf, in connection with the line of railroad on which the concentration privilege is allowed (R. 3300).

(b) Cotton or cotton linters concentrated at Galveston or Houston may be reshipped under this rule via Gulf to points in the United States or Canada as provided in this paragraph, and may be delivered direct to steamship lines (*S.* 5901).

Certainly under this item the owner of the cotton has the privilege of declaring cotton for export and calling on the lines bringing the cotton into Houston to make delivery to shipside. It would be the carriers obligation to arrange some method whereby the delivery would not be made in five different cars, one car each for account of the lines interested in the inbound movement, with that idea in view, Item 65, of Texas Lines Tariff 29-C, I. C. C. 190 provides that the carriers will pay the actual cost of drayage or barge service where cotton is reshipped under the rules of the

tariff. Further, paragraph "b," of Item 41, with respect to coastwise traffic, which is shipside traffic, states that delivery can be made direct to the steamship lines. Further, Item 42, of the same tariff—Reciprocal Routing—Houston to Municipal Wharves—now cancelled because not used, provided that cotton arriving via one line might be reshipped to the wharves by any one of the other Houston lines, and this rule unquestionably would be restored by the carriers to cover the situation as was done at the time [fol. 654] the item was in effect, and probably for some of the same reasons that (R. 3301) Item 50, Reciprocal Routing, Houston to Galveston or Texas City, is published in the same tariff and is still in effect. The mistake generally made in connection with delivery to shipside of cotton from warehouses at the ports is that a carload quantity must be delivered to the carriers for further transportation service. There are no such requirements, as the rates apply on cotton "any quantity," one bale the same as 1,000 bales, and the compression and concentration rules likewise apply on cotton "any quantity."

With reference to concentration in the interior, on page 1469 of the record of proceedings, at Houston, reference is made that there is an additional cost to the carrier in concentrating cotton at compress points as compared where the cotton is not concentrated but is covered by a through bill of lading and stopped at the compress point for compression only. It was recited that there would be a substantial difference by reason of the fact that freight bills would be made at the concentration point, freight charges collected, and new bills of lading issued. So far as new waybills covering being issued is concerned, the carriers continue the practice of making compress waybills covering compression charges, hence there would be no additional service in waybilling. Freight bills are made at the concentration point, but as a result of the concentration small lots of cotton are combined into larger lots; and (R. 3302) speaking not only with reference to comparison of freight bills, the cotton is shipped out of concentration point in larger lots, making of fewer expense bills at the ports, the result being that if the cotton had moved in small lots from points of origin to the ports the same number of freight bills would have been made as at the concentration point, and frequently

more, for the reason that some shippers take separate bills of lading for each mark representing a specific grade. I have had occasion recently to observe an instance of that kind. We purchased 1,500 bales from the Farm Bureau in Houston, and they delivered to us with that cotton freight bills totaling 1067. The trade contemplated and the rules of the exchange require that freight bills be transferred with the transfer (R. 3303) of ownership of the cotton, and [fol. 655] we acquired the freight bills for concentration claim purposes. If there had been a penalty for concentration either at the interior or at the port or anywhere else on that cotton, in my judgment, that charge for concentration would have been taken into consideration in fixing the price on which the cotton was transferred from the Farm Bureau to my firm. It would not have made any difference if the Farm Bureau had not used the concentration privilege, because the charges would follow the cotton. When cotton is concentrated, the railroads are saved the necessity of checking the outbound loading against the inbound billing, and also the probability that small lots of cotton moving direct from points of origin would be sold and moved to different consignees at the ports, but when concentrated in the interior would be offered and sold to one or fewer buyers. Cotton originating at a compress point is included in reshipment on same waybill, but if shipped separately would require a waybill (R. 3304). Further, as compensation for the small amount of additional clerical work which may be involved in concentration, the carriers collect and have the use of a considerable sum of money during the interval of collection of charges at concentration point and payment of concentration claims. This results in the saving of considerable interest to the carriers. There is in fact no additional cost to the transportation lines for the privilege of concentrating cotton which they permit at interior compress plants, in my judgment. There is no additional service performed on cotton that is concentrated at these plants than would be performed should the cotton move as strictly railroad transit cotton, while there are no additional costs to the carriers, there are substantial additional benefits received by the carriers from the fact that the cotton is concentrated.

I wish to refer here to testimony of witness F. R. Dalzell, pages 1163 and 1171 of the record, outlining anticipated dif-

ficulties under the one rate plan in connection with movement of cotton into Houston uncompressed that passed a compress before arrival at Houston. In this connection, reference is made to Exhibit A-44, showing locations of the last compresses from interior to Houston, and statement [fol. 656] showing number of bales of cotton of crop of 1924 produced in counties named and which would be produced in that area beyond the last compress enroute to Houston. Great stress (R. 3305) was laid upon the fact that cotton originating north of Brenham, a distance of 72 miles from Houston (short line mileage), would, under the one rate plan, have to be compressed at Brenham, or a penalty of 12¢ per 100 pounds incurred in disposing of the cotton at Houston.

First, the water rates beyond Houston are based upon the cotton being compressed. A rate is named on standard compressed cotton, which is of density of 22½ pounds per cubic foot, and a second lower rate on cotton compressed to a greater density, usually 34 pounds per cubic foot. The rate on cotton described as uncompressed or flat cotton as it comes from the gin, with density of from 10 to 12 pounds per cubic foot, are higher than the rates on standard and high density cotton.

The amount of cotton that is consumed locally at the ports is almost negligible as compared to the total received at Houston and Galveston. Likewise, the percentage of cotton that moves uncompressed from Houston and Galveston is negligible as compared with the export or coastwise movement, which is described as shipside delivery cotton.

The steamship rates being on compressed cotton, it naturally follows that facilities must be provided for the compression of cotton for the convenience of the trade. Whether these facilities should be provided at the ports or in the interior depends of course as to the necessities of (R. 3306) the owners of the cotton in making the shipment for shipside delivery. If there was not a compress established at Brenham, which is 72 miles Northwest of Houston (short line mileage), located on the G. C. & S. F. and Southern Pacific Railways, cotton originating at Hoyte, on the Santa Fe, would move north to Cameron for compression, which is a point just north of Hoyte, on the Santa Fe, or move uncom-

pressed south to Houston to be compressed at Houston out of the rate if the owner of the cotton desired the cotton to move on a rate which included the cost of compression. The uncompressed rate from Hoyte to Houston is 68¢ and to Galveston 74½¢ per 100 pounds. The rate including the full cost of compression to Houston is 74¢ and to *and to* [fol. 657] Galveston 74½¢. In other words, the shipper would be paying 6¢ over the uncompressed rate to have the cotton compressed at Brenham when moving to Houston, but if the cotton moved out of Houston to Galveston, the rate including the full cost of compression is the same, viz: 74½¢ per 100 pounds.

The second compress point on the Santa Fe from Houston is Cameron, a distance of 183 miles. To Houston, the rates are, uncompressed 69½¢, compressed, including the cost of compression, 74¢. To Galveston and Texas City, the rates are, uncompressed 76½¢, compressed, including cost of compression 76½¢ (R. 3307).

The tariff, containing rules governing the cost of compression of cotton and cotton linters, stipulates with respect to intra-state traffic that when the rate is 74¢ or more, the carriers will assume 18¢ per 100 pounds for compression.

When the rate is less than 74¢ and exceeds 56¢ the carriers shall assume the cost of compression only to the extent that the rate exceeds 56¢.

When the rate is 56¢ or less, the cost of compression shall be assumed by the shipper or added to the rate when paid to the carriers.

When the shipment is of inter-state nature and with reference to shipside rates, the figures above are increased 3½¢, making 77½¢ the minimum rate out of which the carriers assume 18¢ per 100 pounds for compression. (See item 350 of Texas Lines Tariff 17-D, I. C. C. 135.) The tariff and these rates are applicable alike to the interior and the port interests. The port concentrator naturally would not pay full 18¢ additional in order to have his cotton compressed in the interior, but the shipper or receiver of the cotton at the port would become interested in having his cotton compressed in the interior where the uncompressed rate exceeded 56¢ by as much as 7¢. Or in other words, when the uncompressed rate was 63¢, or more, the cost of compression in the (R. 3308) interior would be in no case greater than standard compression at the port, the

rate for standard compression at the port being 60 cents per bale.

I wish to introduce exhibit giving the routes and tariffs that are referred to in this statement, and they should be introduced somewhere along in the statement. I prepared Exhibit A-123. It is true and correct to the best of my [fol. 658] knowledge and belief. The rates on cotton from Brenham to Houston are, 55¢ uncompressed, 66½¢ compressed, including the cost of compression.

The rates on cotton from Navasota to Houston are, 55¢ uncompressed, 66½¢ compressed, including the cost of compression (R. 3309).

In these two cases, the spread between the uncompressed rate and the rate including the total of compression is 11½¢, therefore, the owner of the cotton could, without loss to himself, have the cotton compressed at Brenham or Navasota at a less charge than the charge would be for standard compression at Houston, if the cotton moved into Houston uncompressed. These are the only two compresses located within 75 miles of Houston, and it should be said here that rate of 66½¢, including the total cost of compression, applying from Navasota and Brenham, is by special authority.

According to Exhibit A-44, the next nearest compress to Houston is Victoria, 129 miles from Houston. The rates from Victoria to Houston are, 68¢ uncompressed, and 74¢ including the total cost of compression. To Galveston, 73¢ uncompressed and 74¢, including the total cost of compression.

On the I. G. N. northeast from Houston, the first compress is at Palestine, 151 miles from Houston. The rates from Palestine to Houston are, uncompressed 73¢, including total cost of compression 74¢. To Galveston, 79¢ uncompressed and compressed. Cotton originating south of Palestine may move to Houston and compress at Houston, the carriers absorbing the cost of compression, which is done where the uncompressed rate exceeds 56¢ by as much as (R. 3310) 7 cents, which would include the largest cotton producing area on that line of the I. G. N. between Houston and Palestine. The object of the above statements is to show that the owner of the cotton would incur no extra expense in having his cotton compressed at compress points in the interior, although the compress point was located but

72 miles from Houston. It should be taken into consideration that these points furnish the carriers with facilities for compressing cotton from a considerable area beyond these points, and from Brenham the railroad not making the short line to Houston, would have approximately 60 additional transportation miles on basis of the short line rate. [fol. 659] Where the uncompressed rate does not exceed 56 cents by as much as 7¢, the owner of the cotton could move same to Houston and have the cotton compressed at Houston, either standard or high density and delivered to shipside, and freight bills covering such movement would not be used in concentration refund claim, but would be used as a basis for unloading claims of 1¢ per 100 pounds, the owner of the cotton assuming the cost of delivery to shipside at Houston. Consequently, there would be no penalty of 12½ per 100 pounds as referred to. In my judgment however in fairness to the interior shipper there should be one rate in actual fact—applicable alike to the interior and the port man which should include the same penalties and the same charges that are at the present (R. 3311) time under the two rate plan applicable to the interior shipper 100 per cent and to back of the waterfront man to a less extent.

Referring to statement showing 403,529 bales of cotton produced in season 1924-25 in territory contiguous to Houston, of which it is estimated 329,619 bales would not pass a compress in moving to Houston, after analyzing these figures we make the following observations.

That approximately 30,000 bales of such cotton would move to Houston by truck, and for the future it is anticipated that the movement of cotton by truck from nearby points to Houston will increase.

That approximately 7,000 bales of such cotton could move advantageously to Galveston by truck.

That of the remainder, approximately 100,000 bales would move from points of origin to Houston or Galveston with compression at Houston out of the rate. As an example of this, we take cotton originating in Leon County. Cotton routed via T. & B. V. from stations south of Teague would not pass a compress en route to Houston, but the rates on uncompressed cotton are from 69½¢ to 7¢ to Houston, and from 76½¢ to 79¢ to Galveston, consequently, the owner of the cotton would ship the cotton to be com-

pressed in transit at Houston. The same would apply in connection with cotton moving from Houston County, South of (R. 3312) Palestine, where it is estimated that 30,000 bales are produced that would move to Houston without passing a compress. The same would apply on [fol. 660] cotton from Washington County to a slightly less extent so far as the rate is concerned. From the foregoing it is to be noted that approximately 135,000 bales out of the 329,619 bales would be handled into Houston, either compressed or moved by truck and not subject to the penalties as described by the witness. Of the remainder some 200,000 bales, as stated, a good portion of same would move in on a rate which would permit the cotton to be compressed at Houston and delivered to shipside through the Port of Houston. The parties exporting the cotton would apply the freight bills to substantiate the unloading claims of 1¢ per 100 pounds and would not file claims for refund of the cost of delivery from back of the waterfront. It is assumed that a portion of such uncompressed cotton would move to compress or warehouses on the waterfront, which plants would have no occasion to file claims, other than for payment of the allowance for unloading.

Therefore, it is clearly apparent that the one rate plan applied to the cotton that moves into Houston uncompressed would present no difficulties not now experienced under the two rate plan.

On shipments moving from the interior direct to shipside on through export bills of lading to foreign destinations (R. 3313), issued in connection with the ocean carriers, ten days' time for unloading is allowed at the ports. On shipments from the interior direct to shipside on bills of lading reading to the port only and for export four days' free time is allowed for unloading. On shipments moving from the interior to the ports, for local delivery or to an interior point, two days' free time is allowed for unloading. An average demurrage agreement is in effect and applicable to each of the three above mentioned transportation movements.

On the two export movements, a maximum credit of eight days may be obtained on one car. On the local delivery movement a maximum credit of four days may be had.

These credits are obtained by unloading other cars before the expiration of free time of ten, four and two days respectively. However, the interior shipper is not benefited by this free time on export shipments at the ports for the reason that the extra free time on the export movements is the result of an arrangement between the rail and ocean [fol. 661] carriers and which arrangement has been perfected after long and careful study of the situation so that the ship owners or agents will be protected in the proper allocation of steamers. Of course, it is not to be understood that each car detained beyond the free time would obtain the maximum credits. To obtain the credits it is necessary that other cars be unloaded in less than the usual free time allowed (R. 3314). As a matter of fact, as shown by Mr. Swain's exhibit or statement, filed in former record, the average detention at Galveston of cars of export cotton was less than two days for season 1923. The port consignee does benefit from the four days' credits available to local shipments. I wish here to refer briefly to testimony at the proceedings of witness Mitchell—as to detention at New Orleans of cotton on through ladings for export. There is a situation at New Orleans peculiar to that port where to release equipment the New Orleans lines unload both domestic and export traffic including cotton—Item 19 page 11 of freight tariff 4-B Emerson's I. C. C. 105 covers this condition.

I now desire to offer Exhibit No. A-124, which is a correct copy of this item. I prepared Exhibit A-124. It is true and correct to the best of my knowledge and belief (R. 3315). Attention is directed to subdivision A of Sec. 3 applying to domestic shipments permitting 4 days' time on that traffic for the purpose of exercising the privilege extended under this item of merchandising of compressed cotton and linters on the carriers' facilities, during which the domestic shipment could be and is declared for export and obtains an additional three days' free time—we do not understand that our New Orleans friends desire to have this privilege cancelled. The through bill of lading cotton would necessarily have this merchandising service performed in the interior and the shippers pay for the use of interior facilities for this service. To my knowledge

there are no carriers that allow the performance of merchandising service on their facilities in the interior. It is difficult to imagine how Mr. Mitchell could construe this item as a discrimination against the port and in favor of the interior. It seems to me that the reverse is true. At Texas ports the demurrage agreement between the carriers [fol. 662] and the steamship agents results in promptly releasing the carrier's equipment containing through bill — lading cotton while at New Orleans the carriers themselves provide facilities so that car equipment may be released. It is my understanding that that applies on both domestic traffic and export traffic at New Orleans (R. 3316). The carriers permit the merchandising of domestic cotton on their facilities at New Orleans. They make a charge there per bale for the services and for the use of the facilities, so that the owner of the cotton may prepare it for export, and as indicated there on Exhibit A-124, there is a note which shows that the cotton not accepted in trade must be removed, in a certain length of time from the carrier's premises. In other words, a port merchant can ship cotton on domestic bill of lading from the interior to New Orleans and use the carrier's facilities for 4 days except he must declare it within 48 hours of the notice of arrival for the purpose of merchandising his cotton, and then he can declare it for export and get 3 days' additional time on his facilities and delivery to shipside (R. 3317). That would enable the port merchant, as I understand it, to utilize the carrier's facilities for the purposes for which the interior man has to pay. The issuance of a through bill of lading from the interior to foreign destinations, in connection with an ocean carrier, does not entail any considerable work upon the issuing agent. Such ladings are only issued at large shipping points and under a perfected arrangement the rail agents at such points and under a perfected arrangement are at times advised in advance concerning the steamship agents bookings with shippers at each point, together with steamship contract number and information as to rate and delivery dates (R. 3318). Usually it is not necessary to even telegraph over the railroad wires to the port representative of the rail carrier to obtain confirmation of bookings. At Dallas, the principal

steamship agents have representatives located, who make bookings with interior shippers the same as do port steamship agencies with port shippers, and the interior agencies can and do confirm to the railway agents all details or contracts without necessity for referring to steamship agencies of the ports. As stated, sometimes the carriers furnish such information in advance of the movement, and this information is distributed in such a manner as to minimize [fol. 663] inquiries as to confirmation of ocean contracts. In reality the issuance of a through bill of lading is of benefit to the carriers for the reason that at the ports the carriers do not effect delivery of the shipment in or on their own terminals, but cars are delivered at the ports to wharf or terminal companies which effect the delivery to the ships and thereby prevent an accumulation of cars in the carriers yards at the ports.

Further, at the ports fifteen days free time is allowed by the wharf or terminal companies in which cotton may be held without charge in the warehouse of wharf or terminal companies when for delivery to ships. The port concentrator may avail himself of this free time, which would give him as much free time as would be extended to shipments from the (R. 3319) interior covered by export bills of lading. This fifteen days free time would be allowed on all cotton store on the wharf for delivery to ships so far as facilities will permit, and it will be noted exceeds by five days the free time allowed on cotton covered by through bills of lading in cars from interior to foreign destinations.

At Houston, under the Port Commission rules applying to the public wharves, fifteen days free time is allowed on cotton stored on such wharves awaiting delivery to ship. The same is also true at Galveston and I understand at other Gulf ports.

It would be my understanding that it might enable a shipper to put his cotton intended for export on the wharf without taking out the bill of lading, and let it remain there 15 days without storage, after which time he would take out his bill of lading and the cotton would go forward on script issued against the bill of lading or the receipt covering the cotton.

A custody bill of lading provides that at the time the bill of lading was signed the cotton must be in the port and

(R. 3320) duly delivered to the captain, ship owner or authorized agent, and the steamer named in the bill of lading must be on her way to the, or practically off of the port of leaving. In the case of the custody bill of lading it is further provided that an agent or master's receipt must be issued within 3 weeks of the date of bill of lading, proof [fol. 664] that the cotton had actually been put on board within that period. So if the terms of the sale of the foreign buyer would permit the use of a custody bill of lading the steamship agent would issue a custody bill of lading and the cotton could, if the vessel was so delayed, remain on the wharf 3 weeks after the issuance of the bill of lading, in addition to which would be added the time, that is the free time he may have had on the wharf before that custody bill of lading was issued, which would possibly be a total of 36 days maximum (R. 3321). The firms with which I am connected do buy cotton in large quantities in Oklahoma and in Texas and ship such cotton largely to Houston and to Galveston for concentration by local delivery. Also they make subsequent reshipment to shipside at Houston and Galveston for export or coastwise movement; also from concentration to southeastern mills via New Orleans, Louisiana, and to Pacific Coast via all rail, and they also make direct shipments from interior shipping points to the southeast, to Canadian and New England mills for domestic consumption, and to the Pacific Coast for domestic consumption and for export. They also ship some cotton on through bills of lading reading to the ports for export and to a less extent on through export bills of lading to foreign destinations. Cotton billed for local delivery to ourselves is all delivered to warehouses at the ports that cannot effect direct delivery to ships, while cotton delivered to the Longreach Plant of the Houston Compress Co., Anderson Clayton & (R. 3322) Co. operators, Ship Channel Compress Co., Alexander Sprunt & Son operators, and to the Turning Basin Compress Co., Weatherford Crump & Co. operators, for local delivery is delivered at the same rate, although such plants can and do effect direct shipside delivery.

From the tariffs applying, it is noted that the rates for shipside delivery, exclusive of wharfage, are from Oklahoma points 3¢ per 100 pounds and from Texas points 3.5¢

per 100 pounds more than the rates for local delivery. Texas-Louisiana Lines Tariff No. 50, I. C. C. No. 166, Southwestern Lines Tariff No. 80-G, I. C. C. No. 1776, and Texas Lines Tariff No. 17-D, I. C. C. No. 135.

From Texas points to New Orleans, the export and local delivery rates are the same, viz: 96¢ per 100 pounds, except that the Texas & Pacific Railway apply from certain points [fol. 665] on their line an export rate, including wharfage, of 85.5¢ per 100 pounds, the same as applies from same points of origin to Houston and Galveston. This 85.5¢ rate is met by other lines that can handle the traffic originating at the same points of territories, or in other words that come in competition with the Texas & Pacific, and is lower than the local delivery rate.

From Oklahoma common points the rates to New Orleans for local delivery are $1.055 and for export $1.06, only .5¢ difference. A difference of 1¢ applies from Oklahoma (R. 3323) points, such as Ardmore, Waurika, and Durant. From Ardmore and Waurika the rates for local delivery are 1¢ per 100 pounds higher than the rates for export. From Oklahoma there is only a half a cent difference in the rate, and that rate includes the wharfage. There is a tollage down there that represents the same as wharfage at the Texas ports. Leaving out of consideration the wharfage both on the export and domestic rate, the export rate is about a quarter of a cent lower than the domestic rate, as I understand it. From Durant the rates for local delivery are 1¢ per 100 pounds less than the rates for export. From Muskogee the rates are .5¢ per 100 pounds less for domestic delivery than for export. The same .5¢ difference applies from Altus, Clinton, Hobart and Mangum, but from Salisaw, Oklahoma, the rates to New Orleans for local delivery are 5¢ per 100 pounds less than the rate for export. This 5¢ per 100 pounds difference applies from Fort Smith and Van Buren, Arkansas, and from Little Rock, Arkansas, Hope, Arkansas, Walnut Ridge, Arkansas, and from McGehee, Arkansas, which are some of the principal shipping points. It will be noted that from a majority of Oklahoma points (R. 3324) to New Orleans the rates are only .5¢ per 100 pounds higher for export than for local delivery, and from Texas, Oklahoma and Arkansas points, as referred to above, to Houston and Galveston for export, the

rates are 5¢ to 5.5¢ per 100 pounds higher than for local delivery. To the Texas ports this 5¢ per 100 pounds includes wharfage of 2¢ per 100 pounds, making the shipside rate uniformly 3¢ to 3.5¢ per 100 pounds higher than local delivery rates to the Texas ports of Houston and Galveston.

It should also be noted that from Oklahoma common points the rates to Houston and to Galveston for exports [fol. 666] are the same as to New Orleans for export. The rates for local delivery at Houston and Galveston are 4.5¢ per 100 pounds lower than the rates to New Orleans for the same kind of delivery. From Ardmore, Waurika and Durant the rates for local delivery at Houston and Galveston are 5¢ per 100 pounds less than for shipside delivery at Houston and Galveston, while at New Orleans there is a 1¢ per 100 pounds difference.

Thus it will be seen that the rates on cotton from Texas points to New Orleans are the same, both for local and export delivery, with the exception of that portion of the territory where the Texas & Pacific influence the same export rates to New Orleans as to Galveston. From Oklahoma producing points the local delivery and export rates to New Orleans are the (R. 3325) same within 1¢ per 100 pounds, and the rates that are applicable to a greater portion of the movement are within .5- per 100 pounds.

Thus it will be seen that from Texas and Oklahoma points competitive between the Port of New Orleans and the Texas ports, there is established practically one rate to New Orleans.

With respect to the rates from points in the states of Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia to New Orleans for local delivery, by reference to J. H. Glenn's Port Cotton Tariff 15-A, I. C. C. A-525, item 16, page 4, the Illinois Central, Yazoo & Missisippi Valley, New Orleans & Northeastern, New Orleans-Great Northern and Louisiana Railway & Navigation Company, you will note the following for account of those lines named:

"The rates published herein to New Orleans, Louisiana, except as provided in Note 13, page 3, apply to New Orleans (Depot Delivery), Louisiana. The term 'Depot Delivery,' means delivery of shipments to warehouses or cotton yards of the lines named above, or delivery of shipments to cotton

presses, industries or warehouses at New Orleans, as authorized in the tariffs of the lines named above, provided such cotton presses, industries or warehouses do not affect shipside delivery."

[fol. 667] In the foregoing statements it is shown that cotton concentrated at Houston and Galveston by the firms which I represent (R. 3326) is altogether at warehouses back from the waterfront, and delivery for such concentration is made on basis of the local rate, but to reach shipside an additional transportation cost, exclusive of wharfage and intra-plant service, of from 3¢ to 3.5¢ per 100 pounds is incurred, and to extent such shipside delivery can be made from points on the waterfront without being charged for such transportation cost, the cotton handled for the firms which I represent is penalized.

There is a cost of intra-plant service, whether performed by ourselves or whether performed by public compresses for our account, in getting the cotton out of stock or store and making delivery to the railroads loaded in cars, or by use of drays and/or barges. Such costs we do not consider as transportation costs or costs which should be absorbed by the carriers, but do contend that the carriers should make no higher total charge for delivery of cotton handled at Houston and/or Galveston for our account for concentration at plants back of the waterfront and final delivery to shipside than charged for the same transportation service through plants located on the waterfront which can and do effect direct delivery to shipside.

This discrimination or advantage can be most easily adjusted by the carriers charging one rate for local, for export, and/or coastwise movement.

With respect to movement of cotton for account of the firms (R. 3327) with which I am connected, there is very little movement on through bills of lading from interior points to foreign destinations via the Gulf ports. The movement on through export bills of lading to foreign destinations has rapidly decreased until the amount is almost negligible, and it is our information that this situation is also presented in movement for account of a majority of other cotton firms located in the interior and/or at Houston and Galveston. The terms of sale to foreign buyers spec-

ify whether cotton is to move on through export bills of lading or on port or custody bills of lading. I offer Exhibit A-125 which defines these bills of lading. This exhibit was prepared by me, and is correct to the best of my knowledge and belief. The basis of the exhibit is information [fol. 668] with reference to the kinds of bills of lading agreed upon in the so-called Liverpool conference (R.3328). It is taken from our records of the agreements reached in the Liverpool conferences, and these bills of lading were specified in that conference. It was a communication in the records of the Liverpool conference. They are not the identical rules as adopted. If the terms of sale will permit a through export bill of lading to be issued and the shipper has cotton in the interior, there would be no penalty against through export bill of lading as compared with port bill of lading insofar as the value of the exchange is concerned.

Now and then we hear that the through export bill of lading from the interior via the ports to foreign destinations is an advantage to the interior cotton merchant in that it enables him to liquidate his banking indebtedness earlier than can be done by the port cotton merchant where cotton is assembled (R. 3329) at the port for delivery to ship. It is obvious that if the through export bill of lading covering movement from the interior to foreign destinations and the bill of lading covering movement from the port to foreign destinations can be banked on the same day there would be no difference in the interest; consequently, there would be no advantage interior vs. port or port vs. interior.

In actual practice the interior merchant can only obtain his through export bill of lading after he has assembled at one of the concentration points in the interior sufficient cotton of even running grade and staple to make shipment against his sale contract.

The same condition would apply for account of the port merchant in making shipment from stocks at the ports, but on account of the restricted territory from which cotton may be concentrated at any one given interior concentration point it is apparent that it would take considerably longer to assemble a sufficient number of bales of cotton from which could be selected round lots of even running

cotton of grade and staple than it would take to assemble the required amount of cotton at the ports, for the reason that where the shipper concentrated all of his stock at one point the cotton is assembled more quickly than at a number [fol. 669] of points in the interior, particularly on account of the smaller volume of movement to interior concentration points than to the one (R. 3330) concentration point at the port.

While there is some testimony in this record which disagrees with my statement of facts on this matter, nevertheless in other records in which Houston's principal witness has testified he has given testimony which substantially agrees with my statement on this question, and I desire to introduce my exhibit No. A-126, which is a portion of the testimony of Mr. F. R. Dalzell in I. & S. Docket No. 1641, cotton and cotton linters from Texas to the gulf ports. I have prepared this from the testimony in that record, and it is true and correct to the best of my knowledge and belief. It is only a portion of the testimony (R. 3331).

(Objection was made to the admission of this exhibit on the ground that it was only part of the witness' testimony in another case.)

This brings us to the subject of concentration of cotton in the interior and at the ports, some of the purposes and benefits therefrom and the facilities and charges for the use of same.

The State Commission, as well as the Interstate Commerce Commission, the latter in Docket No. 14413 and other dockets, have thoroughly gone into the matter of concentration of cotton as a commercial necessity, as a result of which there are 100 concentration points in the interior of the state of Texas and 20 concentration points in the state of Oklahoma, at which there are located a total of 120 compresses, and at which points there are maintained cotton warehouses for the proper storing and safeguarding of the cotton crop of these states. The greater number of such facilities represent large investments and are properly financed so that (R. 3334) their warehouse receipts are readily accepted as collateral for financing the growing and [fol. 670] purchase of the crop, and taking into consideration that the value of the cotton produced west of the Mis-

sissippi River annually approximates one billion dollars, it is very apparent that to have sufficient capital for the financing of the crop requires the combined and co-operative efforts of producers, buyers, merchants and the banks. Consequently, it would be very detrimental to the industry that anything should be done to reduce the number of interior concentration points below that number which can handle the production of cotton with reasonable dispatch and afford proper protection against loss and damage of any kind.

[fol. 671] The firms with which I am connected operate extensively in the states of Texas and Oklahoma, whose annual normal production of cotton exceeds 5,000,000 bales. The cotton producing territory is well served by the rail carriers. There are in Texas more than 2,300 railway stations and in Oklahoma more than 800 railway stations, making a total in excess of 3,100 points, from which cotton may be shipped. The rates on cotton from Texas and Oklahoma points of origin are based on any quantity. That is, they are the same per 100 pounds on one bale as on 100 bales, with a very few exceptions. Otherwise the small producer and/or shipper would be at a disadvantage (R. 3335). The greater portion of the 5,000,000 bales produced in the states of Oklahoma and Texas moves to the gulf ports for export movement to foreign countries and coastwise movement to the East. Cotton is sold to the domestic or foreign buyers usually in round lots of 50 or 100 bales of even running grades and staple. The cotton produced in any one community is not of even running grades and staple. Consequently, it is necessary that facilities be provided where cotton can be assembled for the purpose of sampling, weighing, grading and preparation for shipment to foreign and domestic destinations.

To provide such facilities at each of the more than 3,100 points in Oklahoma and Texas would be at a tremendous expense, and would not meet the requirements, as too great a time would be required in which to accumulate 50 to 100 bales of even running grade and/or staple, and as a matter of expediency and economy a number of points conveniently located in producing territories are selected to which the cotton moves from the various other points of origin, and in this way markets are provided, facilities are established

for assembling, handling, protecting and shipping the cotton.

The railroads are benefited in that cotton is moved from points of origin, usually short distances, to the established warehousing points and compressed and is moved from such points to final destination in a larger number of bales per shipment by the use of interior warehouse and compress facilities, which (R. 3336) cost the carriers nothing, than would be made by shipping from points of origin to [fol. 672] final destination. In reality the character of the traffic, so far as the carriers are concerned, becomes carload quantity instead of any quantity because of the use of these interior facilities.

Further economies to the carriers are derived from the compression of cotton, with the result that a quantity of cotton moving into concentration points requiring 2.5 cars to 3 cars is usually shipped from the compress and warehousing point in 1 car. The compression of cotton is of benefit to the owner of the cotton for the reason that the rail and ocean rates on uncompressed cotton are higher than the rates applying on cotton with the privilege to the carriers of compression, in accordance with the rules and regulations as contained in the tariffs of the carriers filed with the State and Interstate Commissions.

Further, by compression the bales become merchantable for shipment by ships to foreign destinations as well as to eastern and Canadian mills via coastwise lines. In addition, it conserves the rail carriers' equipment, in which conservation the shipper, merchant and producer is vitally interested.

The above relates to the concentration and compression of cotton in the interior and before movement to the ports for concentration or direct to final destination.

With respect to port concentration, that which we have said (R. 3337) with reference to reducing the number of points at which cotton may be collected, bought and shipped applies to some extent to the warehousing of cotton at the ports. Interior concentration and warehousing is of benefit and protection to the producer, carrier, buyer and shipper. In other words, to the trade as a whole, including the cotton merchant and/or exporter at the ports. Firms or individuals handling a large volume of cotton during the

season and doing a general export business find it advantageous to make purchases in the interior and ship the cotton to warehouses at the ports where it would be quickly available for delivery to ships and where a large quantity of even running grades and/or staple would be more readily available for quick delivery to steamers taking cargo at such ports. The question naturally arises, what is the [fol. 673] carriers' benefit from concentration at the ports? The answer is, the movement of cotton from interior points of origin is in a large volume for a period of three months, the greater part of the production moving to warehouses for protection or to foreign and domestic buyers within a period of from 90 to 120 days, and at the same time as grain and other agricultural products are moving in large quantities.

As stated, the greater portion of the crop is delivered to the carriers for movement within 90 to 120 days, and warehouses and compresses would not be justified in providing (R. 3338) additional facilities to be used for such a short length of time and to remain more or less inactive for a long period awaiting movement of next season's crop. Therefore, those interested in assembling, handling and shipping cotton at and from the interior and at the ports have provided at the ports additional facilities for warehousing cotton. Some of these facilities are available to the public generally, and others are restricted in their use to cotton handling by and for account of the owners of the facilities. With such facilities established, the users of same go into the interior and purchase cotton, making shipments for warehousing at such port facilities, thereby relieving the interior facilities and preventing detention of carriers equipment by promptly releasing such equipment by unloading in the port warehouses.

From the above it is apparent that there is no distinct line drawn between the interior and the ports in the warehousing and concentration of cotton, nor in the purchasing and shipping of cotton. The interior man can and does use compress and warehouse facilities in the interior and at the ports. Likewise, the cotton shipper located at the ports can and does use facilities of the interior and of the ports.

After all, the cotton originates in the interior and the benefits received in the interior are passed to the port, and

likewise the benefits of handling at the ports are passed to the interior producer and seller. The operation is one of (R. 3339) co-ordination and co-operation as between the producer, the seller, the buyer and the carriers. If privately owned facilities were not provided in the interior and at the ports, unquestionably it would be necessary for the carriers to provide additional and very much increased [fol. 674] facilities in the interior and at the ports, which would require a very large outlay. This has been recognized by the carriers and they have consistently, for a long period of years, co-operated with the interior and port cotton interests in facilitating the economical merchandising and movement of cotton.

An inequality of rates as between the interior and the ports and between warehouses at the ports would prevent the proper functioning of the interior and port facilities to the cotton interests as a whole. There should be one rate charged. If there is any further transportation service that the carriers hold out to perform to effect shipside delivery from warehouses in which the port man would concentrate his cotton the carriers should absorb cost of same out of the one rate charged.

In other words, there should be no charge made should the interior man find it necessary to concentrate cotton, nor should there be any charge made if the port man finds it necessary to concentrate his cotton in order to effect delivery to shipside. By this we mean, that cotton which is concentrated in the interior, which is estimated to be 20 to (R. 3340) 25 per cent of the total movement, and which may be shipped to warehouses at the ports for local delivery, when moved to shipside at that same port no penalty should be attached, the carrier making delivery to shipside out of the rate. That, in my opinion, would draw a distinction between cotton moving into the port warehouses at the ports for concentration, regardless of whether it had been previously concentrated in the interior, and then delivered to shipside at the same port where the concentration was performed and cotton which was delivered to the carriers for a road haul from that point of concentration. Then, if the cotton has been previously concentrated in the interior, there should be a penalty. When cotton going to shipside takes a concentration at the port, I do not know that it is

necessary to designate that as a second concentration (R. 3341). But if cotton that has received one free concentration privilege in the interior is delivered to the carrier at the port for road haul movement to a destination beyond the port, for example, Houston to Galveston, or Houston to [fol. 675] southeast, Houston to New England or Pacific Coast, then a charge not exceeding 3½¢ per 100 pounds might properly be made.

In this way, all interests would be equalized 100 per cent and to this arrangement the interior interests would not object, since the interior participates in the benefits from the concentration at interior warehouses, and also benefits from facilities provided and privilege extended at the ports. Certainly there would be no objection consistently advanced by any one appearing for the port concentrator, regardless of whether on the waterfront or back from the waterfront, since witnesses appearing at the Houston proceeding for port concentrators so located complained of results of failure to provide for such delivery to shipside at the port where the cotton is warehoused.

My Exhibit A-127 is a copy of published tariffs issued by the compresses at Houston which do or may compete for the receiving, handling and storage of cotton (R. 3342). I prepared this exhibit, and it is correct to the best of my knowledge and belief. It does not show the charges assessed by the compress in which our company is interested at Houston. We do not handle any public business. These charges are assessed by the warehouse and compress companies holding themselves out to perform service for the public (R. 3343). The exhibit shows an item of charge of 60¢ for receiving, sorting by marks, incoming ranging, etc. It shows also a specific charge of 15¢ per bale for "ranging." Frequently a man calls for details of specific service. If a bale comes into the compress and the owner instructs us to do certain things, then, if those services are included in the so-called receiving charge, the bale would go into storage. But if he orders any special services, then the charges would attach as for the special services. In regard to flat cotton storage, if they have paid the 60¢ on the first item, they do not pay the 25¢ for the 30 day storage. The 25¢ would be assessed if it remained on hand after the expiration of the free term. That would be likewise true

of the recompressing compressed cotton to standard density with 7 bands (R. 3344). The first 60¢ is only for standard compression. If a man brought his flat bale of cotton to this compress in question, which is the Merchants' Com- [fol. 676] press Co., he would receive all of the services enumerated under that item, and later on, if he wanted high density compression, he would pay extra for the high density.

My Exhibit A-128 shows in parallel columns the port tariffs and the interior tariffs. The source of the information is a compilation of charges shown in port and interior compress tariffs. I prepared the exhibit, and it is true and correct to the best of my knowledge and belief (R. 3345). The purpose of the exhibit is to show the charges for receiving a bale of cotton at the port compresses and into the interior a bale of flat cotton. Factors' cotton on Exhibit A-127, is generally known as cotton shipped from the interior to firms at the ports or at some point, it may be an inland point as well as the port, who are agents for the shipper and who take the cotton and store it and dispose of it in accordance with the instructions. It is usually flat cotton. I see no difference between the factors' cotton shown on Exhibit A-127, and the flat cotton received at interior compresses on which they make handling and receiving charges. The port compresses generally make a charge of 5¢ a bale for receiving, incoming, ranging, sampling, furnishing sampling paper, tags, and delivering samples, with storage for the first month on factors' flat cotton. The Greenville press in the interior, for instance, would charge for a similar service as a first unit, (R. 3346) 25¢ for handling, sampling, tagging, and marking. At the port, in addition, for 5¢ per bale, they will deliver the samples of cotton to the Cotton Exchange uptown; the Merchants' Compress is not on the ship channel, but it is quite a distance up to the cotton exchange. They will make delivery of the samples and give them one month storage for 5¢ per bale. The interior compress would charge first, on the start, 25¢ for sampling, tagging, marking and receiving. In addition they charge 25¢ per month, or fractional part thereof, for storage, making 50¢, and the Greenville Press very likely would not send the samples uptown any great distance to the owner of the cotton. That means that the

interior cost is 50¢ as against 5¢ at the port for practically the same services (R. 3347). There is not as much service rendered at the interior for 50¢ on this factor cotton as is rendered at the port for 5¢. They say they furnish sample [fol. 677] paper and sample tags at the port. The sampling is included in the receiving charge. This exhibit is offered to show that it is less expensive for the shipper to have his concentration services performed at the port than at the interior compresses, which is contrary to the claim of the port compresses. Furthermore, the interior compresses are making a charge for these services performed for the shipper. The factor cotton referred to is flat cotton received at the Houston compress. I consider it comparable to the flat cotton received at the interior compress from their customers (R. 3348). My opinion is that the interior concentrator has a greater overhead burden in his interior concentration than the port concentrator. Furthermore, the interior compresses are making substantial profits for the services they perform for the interior concentrator. Furthermore, in connection with Exhibit A-127, when this flat cotton is received, it is subject to sale and transfer to a buyer, and the charges that are enumerated will attach to the bale after the cotton is shipped out. Special attention is called to the charge for receiving of factors' cotton. The cotton so described corresponds or is comparable with cotton received by interior compresses for warehousing.

From Exhibit A-128 it will be seen that the compress plants located on the waterfront, namely, Turning Basin Compress Co., Houston Compress Co., and Ship Channel Compress Co., who are, together with their operators, complainants in this proceeding, receive for the service of compressing standard density, marking and loading in cars ready for shipment 85¢ per bale, 83¢ per bale, and 86¢ per bale, respectively, with additional revenue per bale for the service of unloading, insurance, and topping, which is comparable with the revenue received by the interior compresses for more service on like cotton (R. 3349). What I wish to bring forward in this exhibit is that this item of 60¢, which they have testified is the charge for compressing cotton at the port, is subject to additional charges in their

tariffs for additional services which the interior compresses include in the 18¢ compression allowance. When it is stated that cotton can be compressed for 60¢ per bale, standard compression, the port compresses who set out in their tariffs the charge of 60¢ a bale for standard compres-
[fol. 678] sion do not include the services that are performed by the interior compresses in compressing flat cotton to standard density ready for shipment beyond the compress point, and to make up a comparison, it is necessary to add to the 60¢, as shown in the port compress tariffs, other items of charge that bring the revenues of the port compresses enumerated to 85¢ per bale, 83¢ per bale, and 86¢ per bale. They also have the additional revenue for topping. The 85, 83 and 86¢ would not include the insurance in their warehouse nor the unloading. According to the report of the Houston Cotton Exchange (R. 3350) there were 2,668,265 bales of cotton received at Houston in the season 1924-25, and 2,377,844 bales compressed at Houston, the greater per cent being high density compressed at the 11 compresses plants at Houston, or an average of 216,167 bales per plant, furnishing to each plant an average volume of 1800 bales per day, including Sunday, for 120 days or four months, or 1200 bales per day for 180 days, or six months, including Sundays.

Recompressing at the port of cotton arriving at the port already compressed is not because the bale is sampled or resampled at the port, nor does the compressed bale present any difficulties with respect to taking proper samples for classification purposes. One has only to take a trip along the wharf front where cotton is stored in the wharf sheds for loading on steamers or while cotton is being loaded on steamers to note the great per cent of cotton which has open sample holes.

Further confirmatory that recompressing is not necessary after the compressed bale is sampled at the port is the fact that considerable cotton arriving at the port uncompressed, or standard compressed, upon unloading and sampling, is immediately compressed to high density. A great per cent of this cotton, for example Texas Farm Bureau cotton, is offered for sale and is usually resampled before each transfer of ownership and is not recompressed before delivery to shipside. It would be impossible, without in-

curring the expense of recompressing (R. 3351), to have all cotton go forward with samples holes covered and the charge for recompressing makes such recompressing prohibitive.

Houston and Galveston are large spot markets, and ex- [fol. 679] cept where the port concentrator is almost an exclusive exporter, and for that reason is a buyer rather than a seller at the port, a majority of the cotton shipped to Houston and Galveston and stopped at warehouses is resampled at least once and sometimes two or three times, and although the bales so sampled have open sample holes, the bales would not be recompressed if there is sufficient of the original covering to carry the shipping marks on each flat side of the bale.

A port concentrator, who exports the cotton he warehouses at the port, and does not engage in spot selling to any great extent, could recompress to high density cotton arriving for his account after it has been sampled for classification, but in our opinion even the exclusive exporter would not do this if there was not a lower rate for density compressed cotton than there is for standard compressed cotton.

As copies of interior compress tariffs have been placed in the record at the request of the complainants in this re-opened proceeding, we assume it will be satisfactory to quote from various interior compress tariffs to show the first month's cost attaching to a bale of soft or uncompressed cotton received at interior compresses, and which total charges (R. 3352) should be compared with the charges previously shown as assessed by the Houston compresses for receiving uncompressed cotton. That was the purpose of Exhibit A-128. That has already been explained, and I don't think any further explanation is necessary unless someone wishes some further explanation.

I became connected with George H. McFadden & Brothers Agency in 1918. One of my duties has been to check the compress bills for services rendered by the various compresses in the state in connection with shipments of cotton in which we were interested. I have found the compress companies consistently collecting the charges on basis of their published tariffs.

The interior compress charges shown in Exhibit A-128 are representative. There may be a few compress com-

panies whose total charges will be less than the above average, but this is brought about by local conditions.

Analyzing the situation from my 33 years experience in [fol. 680] transportation matters, the greater portion of which has been devoted to specializing in the transportation and economical handling of cotton, both from the standpoint of the carriers and the cotton merchant, in my opinion the carriers are greatly benefited by reason of privately operated facilities for assembling and compressing of cotton as now established in the cotton producing area (R. 3353). Further, in my opinion it would be impossible for the carriers, except at a greater cost, to duplicate and operate with the same results those facilities.

Concentration and compression is a commercial necessity. This is sustained after numerous investigations made by the Interstate Commerce Commission and by the state commissions in the cotton producing territory.

Further, cotton cannot be satisfactorily produced, assembled, marketed and moved to final destination without adequate concentration and compression arrangements at convenient points within the area of production. The elimination or reduction in such facilities and cancellation or penalization of concentration and warehouse privileges would prevent the proper and orderly merchandising and shipment of cotton and force a disordered and uneconomical movement to the ports to the disadvantage of the grower as well as to the interior and port cotton merchants, and result in congestion of facilities at the ports and the tying up of railroad equipment, which would result in great loss to the transportation companies and to the general shipping public.

McFadden concentrate their cotton back of the waterfront at Houston and Galveston and purchase some previously concentrated cotton in the interior. Since I have been connected with the McFadden Agency, I have watched the situation very closely, and when we buy cotton, I follow it up to see if it is possible that the cotton could avoid [fol. 681] the second concentration privilege at the port, on account of the previous concentration at the interior, and from the concentration claims filed with the carriers for refund of overcharges on shipments made from concentration points, it is my best approximation that no more

than 15% or 20% of the McFadden cotton has a second concentration at the port. If a charge is made for second concentration when the one rate plan is established, we would be penalized to the extent of that charge on all cotton which had been previously concentrated in the interior (R. 3355). Regardless of that penalty, I am testifying in this proceeding for the one rate plan, because it is apparent that under the two rate plan, we are now penalized 100% on the cotton we concentrate at warehouses back of the water front. If the one rate plan relieves us of that penalty to the extent of 80% or 85%, we are much better off than we are at the present time under the two rate plan. That would be true of any of the back of the water front concentrators, in my opinion. There has been a recent announcement in Houston that additional shipside facilities will be constructed on the ship channel. The extent of those proposed facilities is somewhat doubtful. I have no personal information; the only information I have is as the reports appear in the newspapers, that an additional shipside facility would be established at Manchester, which is within the switching limits and port limits of the port of Houston. (R. 3356). The announcement stated that the investment to be put into those facilities, was variously reported from $3,500,000 to $5,000,00-.00 and that the facilities were to be constructed on the ship channel and to be shipside facilities. Mr. J. K. Dorrance is President of the Houston Cotton Exchange at the present time. I think that he, being a Director and Officer of the Exchange, would have a great deal of influence with reference to the policy of the Houston Cotton Exchange with reference to matters of traffic and transportation. K. E. Womack is also a Director of the Houston Cotton Exchange under recent election, and is Chairman of the Freight Traffic Committee. (R. 3357). As such, he should ordinarily be in a position to control the policies. Whether he does or not I am unable to say. Both Mr. Womack and Mr. Dorrance are engaged in the cotton business at Houston; I do know where they concentrate their cotton at the present time; they concentrate [fol. 682] back of the water front. According to the newspapers, they were announced as being interested in the new warehouse. In regard to any testimony in this record, with reference to the difficulty under the one rate plan because

of the fact that they have 17 railroads in Houston, and that cotton may move in over all 17 of these railroads, and would have to move out in a like manner, and could not be switched, the facts are that a man would not be presented with any difficulty in delivering his cotton back to the carrier for delivery at shipside, regardless of quantity. In my opinion, it would be absolutely silly for the carrier not to restore the reciprocal switching arrangement for the switching of cotton at Houston (R. 3359). The reciprocal switching privilege was at one time in effect at Houston; it was cancelled, as I understand, because it was not used. It was not used at Houston because generally the man handling cotton would not resort to the concentration claim, and therefore, there was no necessity for the reciprocal arrangement unless the concentration privilege was exercised. The proposed one rate plan, would not affect the rate on cotton moving to a cotton mill, which would move on the cotton mill rate, which is a special rate. If the cotton, however, was concentrated and re-shipped to a cotton mill beyond the point of concentration, the normal cotton rates would apply. In that case, there would be an increase in the rate if the normal rates were applied (R. 3360). The carriers' privileges under the out of line service, and back haul has generally grown up as a result of the efforts of the carriers to increase their business, and from competitive conditions. I do not know of any changed conditions that have taken place since the original hearing in this case. We are still paying 3½¢ and 3¢ to get our cotton from back of the water front to the shipside as against the water front plant, which gets a lower rate than we do, and that condition has not changed. I do not know of any transportation reason, why there should be a difference between the export and the domestic rate of the Texas ports, exclusive of wharfage (R. 3361). On a car of cotton moving from Dallas to Houston, to the Houston Long Reach Plant, on a bill of lading marked "for export" on which a rate of 83½¢ would be applied, and another car of cotton moving from the same point and moving to the same facility at Houston, on which an 80¢ [fol. 683] rate would be applied, I do not see any advantage that man has by his location in the application of those two rates. Substantially the same services are employed; there is no substantial difference in the services in de-

livering the car for which the higher rate is paid and the one upon which the lower rate is applied. I would make the same answer with reference to the other shipside facilities, such as Alexander, Sprunt & Son, and the other shipside channel compresses (R. 3362).

I can identify Exhibit A-129 as pictures of the facilities of Alexander Sprunt, the Turning Basin Compress, and the Houston Compress Company. The two views in the middle are of the Turning Basin Compress Company on the channel at Houston, the Turning Basin Company is Weatherford, Crump & Company. The second is the public wharf site, from which the ships receive coton handled through the Turning Basin Compress (R. 3363). The bottom picture on Exhibit A-129 is a view of the Long Reach Turning Basin Plant. The large number of cars spotted back of that plant represent the railroads classification and break-up yard. That is Booth Yard.

My firm reships fairly large quantities of cotton from our warehouse at Galveston and Houston to the domestic mills in the southeast, and to New England Mill territory. We do not re-compress that cotton at Galveston and Houston, unless the bales are in bad order, which is exceptional. If, as a result of this case, the railroads should be permitted to increase their domestic rates on cotton to the ports, say 3½¢ per 100 pounds, for the sake of argument, and reduce their export rates a certain figure, to make a one-rate plan, that would not, in my opinion, cause the purchaser of cotton to reduce the price which he is now paying the producer of cotton (R. 3364).

The term "factors" cotton is an old name attached to [fol. 684] cotton which is forwarded from the interior to parties located at some point who were called factors, who handled the cotton for account of the owner. Factors cotton is not ordinarily compressed in transit; it usually moves in flat. It is my understanding that the term "Buyers' Cotton," which is a localism, is cotton that is shipped in for patrons of the press other than these factors, bringing it in for the purpose of merchandising and handling in it. It is not always flat cotton. The tariff says "Buyers' Cotton" and means all of these charges are attached to the so-called patrons of the press. That is all one item, just flat cotton. It is not restricted to Buyers' Cotton and

linters, but they do make a distinction in the charges on Buyers' Cotton. That receiving, incoming, ranging, sampling, etc., applies on the factors' cotton, and the factors' cotton, as I stated, usually moves in uncompressed. Then the tariff goes on with a description of services on Buyers' Cotton and Linters. Under the heading of flat cotton is an item of compressing to standard density with seven bands. That means cotton that is moving into the port and a facility flat. I do not think there is any substantial compression of flat cotton at the port to standard density to be later compressed to high density. If a man wanted to ship cotton, the southeast or the New England Mills, and the mills would not take high density compressed cotton, he would have (R. 3366) it standard compressed, because it is cheaper; but you will have to take this tariff and analyze it as a whole, because when cotton gets in it is rather a peculiar situation with respect to merchandising, especially at the ports. It is usually brought in and what is called ranged, or arranged. The arrangement means to lay it down so samples can be taken. Some compresses will allow two lay days. That means the cotton will lay where it is ranged, where a man can inspect it, for two days without penalty. If that cotton remains there longer than the specified time, there are certain penalties attached, [fol. 685] and all through the tariff, one must go through and enumerate just what one wants done with a bale of cotton delivered to these presses, just the same as at the interior, to get at the total charges, and for that reason, to simplify the matter, I drew these comparisons.

I think the one-rate plan would be beneficial to the producer, because it puts everybody on an equal basis. It is best for the business as a whole. I do not think the industry should suffer for any one man. We might find one man would be benefitted by not operating as another man does, but the one-rate plan, in my opinion, is in favor of the producer and also the merchants, the interior men and the port men. I do not mean that it gives the producer a preference over anybody else, but that, taking it as a whole, the industry as a whole is benefitted in my opinion, under it. I think that the producer should be given quite a little consideration. I think everything should be done for the marketing and protection of his crop, and the financ-

ing of it, and I think that is all interwoven in this case. The competition in markets being permitted to compete with each other on an equality of freight rates, would be of benefit to the producer (R. 3368).

Under the arrangement between the interior compresses and the carriers, the interior compresses have to guarantee their compression, and if a bale of standard compress cotton arrived at the port with a burst band, they would have to pay a part of all of the expense of recompression (R. 3369). If the port man compressed a bale of cotton to standard density, and before it moved out a band broke, they would charge for recompression if he had to have it recompressed; but I am in no position to say whether or not, if that band was discovered off of the bale before the bale left the facility, the compress would put it in good order, because at the water side, they would catch the bad order and order it repaired. If a band broke between Dal- [fol. 686] las and Houston, and it became necessary to recompress that cotton, the port compressor would assess this 60¢ recompression charge. In such case, the interior compressor, under his arrangement with the railroad company, would have to pay it, or a portion of it. There is one arrangement whereby they participate with the carriers, and there is another where the density is not secured the compress pays it all (R. 3370). I am not familiar with the compression contracts that are in existence in Arkansas.

Exhibit A-120 shows that under the one-rate plan the water front concentrator would still have an advantage of 5¼¢ per bale, where the water front plant does not exercise its privilege of concentration. He does not have to exercise it; if he wants to make delivery at shipside without resort to concentration, he does not file a concentration claim, therefore the 1¢ per 100 pounds unloading allowance applies. Five cents advantage is just that much. Whether it is (R. 3371) going to be material to the extent that the other operators cannot operate, I cannot say. Under examples 3 and 4 of the exhibit, where I show topping 20 bales at 10¢ per bale, 2.7¢, that means that I have apportioned the 10¢ charge over the whole number of bales in the car.

Under the present arrangement, the water front man has 5¼¢ per bale advantage, and in addition 18¢ per bale

advantage over the interior man, but not over the back of the waterfront man. The cotton now bears the burden of whatever the charges are. The more you equalize the important factors engaged in the marketing and consumption of cotton the better you make it for the men who produce it as well as the men who market it and handle it. Any inequality must necessarily be reflected in giving one man or set of men or operators an advantage over another, and to that extent it would have a tendency to drive competition out and whenever you do that you have vitally affected the producer. You affect him more than anybody I know of in the whole transaction. It is our contention in asking for the one-rate plan, that even if it should develop that [fol. 687] it would be necessary to increase the intra-state domestic rate slightly, the producer would profit by the preservation of the widest sort of competition (R. 3374). When this cotton is handled, the Texas crop is practically an export crop, and the man buying that cotton figures that cotton against going to the shipside, and he takes into consideration what it costs him. The Texas Commission rate of 80¢ has a jump of 3½¢ to get to the shipside today. I think that today all buyers buying cotton in the interior of Texas take into consideration the freight rate (R. 3375). The buyer having his cotton concentrated at the shipside facilities today might, if competition forces him to, pay the man a little bit better price than the man who knows he will have to pay an 83½¢ rate. Any situation might exist. On the other hand, the man paying the 83½¢ rate, at a disadvantage of 3½¢, might need cotton so badly that he would pay 5¢ more than another man. There is no fixed rule. The situation that confronts us is a situation where one factor has a distinct and very apparent advantage over the other (R. 3376). There are through rates from Texas to the southeastern mills. If we increase the domestic rates from Texas point to Houston and Galveston, from 80¢ to 82¢ or 83¢, that would not have any effect in increasing the rate to the New England Mills, nor to the Pacific Coast, where there are through rates published from point of origin to final destination. It would not affect or increase the export rate. It would reduce the cost to the farmer to get to shipside (R. 3377).

Cross-examination:

I remember there were some compresses located at Galveston and Texas City that did high density compression. I am unable to tell what time they were established (R. 3378). I suppose that competition caused the port compresses to reduce their charges so as to include the expense of handling to the ship's berth. We would pay the Kempner Compress at Galveston the charge of 75¢ for high densitying and moving the cotton to shipside. Whether the [fol. 688] interior shipper utilizing Kempner's press would get to shipside at a total less aggregate cost than he would if he paid the through export rate depends upon what it costs him to get the cotton from Kempner's press to shipside. It would not make any difference what a man charged for compression, so far as the relation as between two men located at the port is concerned, so long as there is a cost that must be paid by one man which is in excess of the cost paid by the other. If a man ships his cotton direct from the point of origin in the interior without concentrating it he cannot put it on shipside for export until he has merchandised it; it would have to go through the process of assembling grading, and putting into even running lots, in order to comply with a sale to a consumer of an even running lot of cotton. It would not generally be necessary for a man to do that more than once to get even running grades. I should think that my company uses a much larger number of grades than the small merchant in the interior (R. 3382). The cotton itself might need a second merchandising service. I would say ordinarily that on account of engaging in the southeastern and New England Mill business, it would be my impression that the cotton would not be high density compressed immediately when it is received at our warehouse in Houston. I understand that the Farm Bureau cotton received at the Houston Fifth Ward Plant is high density compressed on arrival (R. 3384). We never re-compress cotton at our Houston Compress, which has already been compressed to standard density and is going to the southeastern mills (R. 3384). When the cotton is shipped in to Houston, we do not necessarily know whether it is going to the southeast or abroad, or where it is going. I should think that is also true of our plant at Galveston. It is not necessarily true of every party concentrating in

Texas, because there are some operators who do a very large export business. If they are doing an export business I don't think they would know against which contract it may be applied nor where it may go. We have two plants [fol. 689] at Houston; one plant probably could be made to handle between 16,000 and 20,000 bales; the other is limited to 10,000 bales. There is compression at only one of them, the larger one (R. 3386). It is, or was, the property of the International Great Northern. The Compress facilities are the property of our company. We pay an agreed rental. I do not know the amount. I found the facility available, and I think I conducted or participated in the negotiations for the acquisition of that property by lease (R. 3387). We have looked over several plants on the water front. Among them the Shippers' Compress Clinton Plant, the Magnolia Compress Plant, and various sites that might be on the water front which have been offered to us from time to time. We considered going to the waterfront because we were following the policy of any merchant engaged in business who expects to expand and increase his business. Our business has at times been excess of the capacity of our plant, and we have had to employ the facilities of publicly operated plants at Houston and Galveston and for that reason we would keep our eyes open at all times to see if additional storage space could be provided for the operation of our business. If we were considering where to locate an additional plant, we would locate back of the water front, because I think it is absolutely illogical to locate a compress and a shipside facility on the water front. Unless a man has tremendous volume of business and can control competitive traffic to such an extent that he can force a situation that is uneconomical, he cannot operate such a plant to the best advantage, and the increased expense of locating there is not justified and not necessary to be put upon the traffic. If that plant affords him an advantage in a way which does not involve a preference over some other man in the matter of transportation charges, he would be justified in figuring his cost as against what he expected to be his compensation. I can realize from my own experience that a man going down on the water front, just as these Manchester people are now doing, must have an im- [fol. 690] mense storage, space, so that they may have available sufficient cotton to cause the Steamships operating in

the port of Houston to come to the cotton instead of the cotton going to the ship (R. 3389). That can be done only where there is a large volume which means an expenditure of a large sum of money, not only for the storage of cotton but for the facilities for the delivery to the ship. Taking all of that into consideration, a man coming to Houston, unless he wants to be so large in his operations that he can afford to desregard a great many things that must be taken into consideration by the average cotton man, would select a location such as we are now operating where he would be able to operate at a lesser cost than if he went to the water front. I mean lesser cost in investment. It just depends upon how efficiently a man operates his plant as to whether there is a less cost of operation, taking into consideration the things which are chargeable to it. I do not undertake to say that a man located back of the waterfront is better located as to all things than a man on the waterfront in the handling of cotton (R. 3390). Irrespective of the transportation differences in the location of the plant, I would select the back of the water front, and even under the pending case, I would select that location, believing that this situation cannot exist as it is today where a man located on the water front in the same switching community, can have a preference in the rate over a man located in that same community. If there were one rate to all facilities in Houston, regardless of where we put the plant, so far as the railroad rate is concerned, and we were expecting to engage in a large amount of export business whether we would put the plant back of the water front or at the water front would depend entirely on whether we had the volume of business (R. 3391). The volume of business, the cost of investment, the method of operation, whether you expected to operate a wharf company and berth ship, and take custody of ships, etc., all those things would have to be considered. There is at the present time supposedly a [fol. 691] minimum quantity of cotton shipped from one berthing place to another; that quantity is chargeable. They will always have some requirements, but they might finally find it is too expensive, and decide to have the cotton come to the ship at a regular point and each berth would probably have to be restricted to one port (R. 3392). The requirements might change and they might decide they

would not shift for any quantity except a full cargo. I think the man who goes to the water front takes a great many chances; a man takes chances whatever he may do. You would naturally take into consideration the cost of delivery from a back of the water front plant. I am in favor of the one rate plan for delivery to shipside (R. 3393). The one rate plan contemplates delivery to shipside (R. 3394). Under the one rate plan the railroad will collect 83¢ to our International Great Northern shed and 83¢ to the Houston Compress Company. If the railroad refunds me 3.5 cents because I select some other means of conveyance, to reach shipside, I do not understand that the railroad has collected 79.5 net from me and 83 cents from the shipside plant, and even if that were so, there would not be two rates. The railroad would get 83¢. They do not rebate anything. I pay an additional amount, and they refund that amount because it is in excess of the through rate, and that is universal in all concentration (R. 3395). We are not talking about net revenue to the carriers; one familiar with rate construction would never figure rates constructed along that line. The carriers do not take net revenue into consideration when they bring cotton from the interior out to the Congress Street Yard, and (R. 3396) charge 83¢ and then take it to the Houston Compress Company five miles farther and charge 83¢. I think they ought to deliver it all in that entire district for 83½¢. I think the 83¢ rate ought to apply to the man for a short haul as well as a long haul. I advocate that they refund to me the amount which I paid them that it cost me to get down to the shipside. When the initial shipments come in, I pay a charge which is the shipside rate. If I sent that cotton [fol. 692] down to shipside, I pay an additional amount over that original amount, and that is the amount that is refunded to me, and not rebated me nor paid me (R. 3397). Under the one rate plan, if the carriers take the cotton to Anderson Clayton, they are through with it; the movement to our plant is shorter than the movement to the Houston Long Reach Plant. They have no additional move to make. The same car of cotton, as shown in my testimony, coming in on the International Great Northern, these industries being located on the International & Great Northern, was

(R. 3398) put in this Congress Street Yard, taken to our plant, and the car going to the Houston Compress Company goes out by another engine and is put in another Yard and classified there and put into their plant. The haul into Houston, to any of the back of the water front facilities could not involve as much mileage as the haul to the shipside facility because you would have to have a situation where there was another line involved, another location on another line (R. 3400). After a shipment is delivered to the Long Reach Plant, it can be transferred there and switched subsequently to another wharf (R. 3403). The tariffs before the Commission authorize such service. Such service does not differ from stopping it back of the water front and transferring it there and shipping it on. There may come a time when the Anderson, Clayton & Company, or the Houston Compress Company, will be glad to have the privilege of concentrating cotton in their plant and re-shipping it to Galveston. There may be a shortage of good grades and the transit may have to be exercised to get the cotton to Galveston or some other port (R. 3404). The man back of the water front, or the water front man at Houston can send that cotton to Galveston, either under the present situation or under he one rate plan, and the rate would be the same for both (R. 3405). If the one rate plan is established and approved, that rate will be the shipside rate, and will carry the cotton to shipside under the (R. 3408) concentration [fol. 693] rules. If cotton goes into a plant near the water side, but which is not adjacent to ship's berth, and is subsequently moved to shipside, the transportation cost should be taken care of by the carrier. I do not mean intra-plant service (R. 3409). The carriers obligation is to move the cotton to shipside, and I will not say that they must hire a man and a track, or a mule, or a barge, or a dray or anything else. I do not mean to say that I advocate one rate which will take care of the cost of moving the cotton from the warehouse to the shipside by whatever conveyance may be employed. I do not say that I oppose it or favor it. I say the rate should include the cost of transportation to shipside. I did not say "by whatever means they may employ." It has been testified that the carrier has no right to come into the water front plant and pick up a bale of cotton; now if the water front people take that cotton and put it into

cars (R. 3410) you have a loading charge or expense, and you turn it back to the carrier loaded in cars, the same as the back from the water front. Up to that point you have not incurred any more transportation expense, but you have incurred an intra-plant expense the same as we have in putting it into the car. If they cannot get it over to Alexander Sprunt, they should, with the other railroads, refund your money, but I am not going down there and tell you that right along here is the line, or that this charge of a fraction of a cent per bale should be refunded to the Houston Compress Company, that it represents more service, or anything like that, because I am not prepared to testify to that. But as a general proposition, none of your intra-plant services should be taken care of by the carriers. If there is any transportation expense in getting it from the warehouse to the ship's berth, and if it is delivered to the carrier, they should take care of it. It is not a fact that we want to put the shipside operator at a disadvantage as contrasted with our facilities that we have leased from the railroad (R. 3411). Where the Houston Compress [fol. 694] Company builds a trolley line and trolleys the cotton from the warehouse around to a point on the wharf, I would not say whether that cost of operation should be refunded. I am not an efficiency man, and I don't know whether that is the proper way to handle cotton. If there is a necessary transportation service performed it should be refunded. I am not saying how the carriers should transport the cotton to shipside (R. 3413). I cannot answer the question whether or not my companies have the heaviest interior interests in compresses to any firm in the territory. They have some concentration plants east of the river but I don't know what their interests are in them, if any. We handled about 200,000 bales in the Houston warehouse in the Season 1924-25; for the present season it is somewhere between 175,000 and 200,000 bales. Very little of that cotton is again handled at our Galveston warehouses (R. 3415). I should say that the Galveston warehouse handles as much as the Houston warehouse, if not more. We have a substantial movement of export cotton through the port of Houston. We do not deny that Houston is a port and has facilities there, and we intend to use these

facilities, and we intend to export cotton through (R. 3416) those facilities. I do not know that my company handles a larger proportion of cotton all rail out of Houston and Galveston than most of the cotton firms there (R. 3417). We move the cotton from our Houston warehouses to the ship by car. I have made numerous inquiries through the traffic department of the Houston Cotton Exchange, and all of my inquiries have indicated that the drayage charge would run around 50¢ per bale. Mr. Dalzell answered that drayage could be obtained, but I have not been able to confirm that at a figure that would enable us to use the dray service. Therefore, since we are not on the water front at our Harrisburg Plant, and have no facilities for unloading on barges at the other plant, we use the car or switch service. Ido not know whether we could equip the other plant so as to load barges. There is a barge service at Houston, [fol. 695] and apparently it is in very good hands (R. 3418). I think the plant is near enough to the barge line, but I don't know whether the barge people would like to come up that for or not. I am inclined to think that if the business was offered they would be willing to do it. The cost would be the first thing that we consider, but we want to cooperate with the carriers. I think we endeavor to get 100 bales loaded in a car. We consider that the maximum loading, and it takes a good deal of time to get it in (R. 3419). There is no requirement that we load the cars out of our plant to any given number of bales per car (R. 3420). We do exercise the option of declaring cotton for export and having carriers deliver it to shipside or deliver it ourselves, and make a claim on some coastwise business. The concentrator does exercise that privilege to get his cotton delivered and obtain the protection of the through rate. If there were a one rate plan, there would be a claim filed in practically all cases. There should be. However, at New Orleans, I understand that while there is a one rate from a great many points, some of the people over there do not file claim. I do not know whether the rates from Oklahoma and North Texas to New Orleans for export are rates which were made originally to equalize with the export rates to Galveston (R. 3421). I would not attempt to

describe the policy of the Texas & Pacific Railroad at the time I was connected with it. I have been at several meetings where they were talking of putting an 85½¢ rate, but I would not attempt to describe it. At the time that went in, it is my recollection, that it was a one rate to the port. The urge of the Texas & Pacific to put the 85½¢ rate in at New Orleans to equalize the export rate, including the wharfage, at Houston and Galveston, was to hold the cotton to their own lines (R. 3422). I would not say that practically al- of the 30,000 bales handled this season into Houston by wagon or truck, originated in Harris County. I have had a good many people say they bring it in for long dis- [fol. 696] tances, but I could not verify that (R. 3423). Ports bill of lading, being the most desirable, because it is negotiable, identifies the cotton with a specific steamer and the owner can reasonably expect arrival promptly (R. 3426). The custody bill of lading is not so valuable, and is not so readily acceptable, as I understand it, by the foreign buyer. The through bill of lading was discarded a great deal in the time of the congestion of 1906 and 1907, when cotton was allowed to remain tied up and port cotton was given preference by the steamers, causing delay, and a man did not know when to expect his cotton. The Liverpool bill of lading conference was held in 1907 at Dallas, its purpose being to consolidate them so that all concerned could move their cotton out and the consignee on the other side would be reasonably protected. I think the validation feature came about from a desire to let the man on the other side feel that he had a real, honest to goodness document. I don't think they would have as many occasions to request validation under normal conditions as there might have been following the 1907 season. I do not think the interior shipper is greatly benefited by the free time on the wharf. He has to physically transit his cotton to shipside on a document that is taking it through to final destination, and after that bill of lading is issued it means that he must assemble his cotton, deliver it to the carrier, and it passes out of his possession sooner than it does with the port man. I can think of times when cotton would be worth more today than five days from now, and it really might work a hardship. I do not think the privilege at the port, the free

time on the wharf and such as that, is the shipper's concern. He wants reasonable dispatch. If there were detention and demurrage should accrue in the absence of an agreement with a steamship agent to take care of the demurrage the shipper would not have to take care of it because it is at an intermediate point between origin and destination and demurrage could not be assessed. I do not recall any clause in the through export bill of lading prescribed by the Interstate Commerce Commission which provides that the owner [fol. 697] may be taxed with demurrage or detention at the port. It seems unreasonable to me to have it there (R. 3430). I imagine that cotton coming in on the Southern Pacific would be handled in their Englewood Yard, and after they break their train up and classify the load they would bring them down on a transfer to the International Great Northern at Hardy Street, and would deliver those cars (R. 3431) on the transfer to the International Great Northern, mixed up with every sort of a load going every where and the loads from the Hardy Street Track would be brought into the Congress Street Yard, and mixed up with other cars going to Long Reach, and incidentally, what might be put into McFadden's would be put in there, and then they would be hauled on out over the International Great Northern. I do not know that it would be handled that way (R. 3432). I am not familiar with the Oklahoma system of concentration. The charge of 5¢ made by the Merchants' Compress Company on factors cotton, as shown on Exhibit #A-127 does not cover the cost of getting the cotton out. The Tariff shows a charge of 60¢ for shipping out flat cotton, and a 60¢ charge if they compress it to standard density, and a 75¢ charge if they compress it to high density. If he is going to ship it out compressed, he takes additional services over those enumerated in this item, and he would have to pay for them (R. 3436). In the case of the Exporters' Compress Co., the charge is 10¢ and in addition thereto, charges for whatever services he might employ. The point I am making on this Exhibit is that the charges for receiving cotton, comparable with the cotton received in the interior, is 5¢ at the ports, and the charges as shown in the interior tariff. The charge for shipping flat cotton out of an interior facility is the same.

The compress, after they get the cotton in there, does not want the man to take it out uncompressed (R. 3437). I deliver to any of these compresses 100 bales of cotton to store for me, and I order it out. They charge me 10¢ for shipping by rail. If I store that cotton with them uncompressed, and I do not order it compressed, when I ship it out, they charge me the flat 60¢ rate. I would not say that the shipping out flat covers the case where they do not get the compression, and that the shipping out by rail, or by [fol. 698] dray or by barge, at 10¢ per bale, is where they do get the compression; because the cotton can come in and be stored compressed. If I acquire cotton that came in to the factors, then I have got to get it out. I have gotten a little grayer than I was when I went to Houston trying to find out just where these charges begin and where they stop. Whether it is going to cost you more than 5¢ before you get through with it, depends on what you do with the cotton. The charges I was talking about in my statement are receiving charges, the service of receiving cotton and getting it into storage. I think the owners of the Merchants Compress Company are factors and use the facility a great deal, but they also do a public business for other people. They have offered us their facilities, not for a factorage business, but for handling cotton in the usual way. I do not understand that W. D. Stevens & Company is the only firm that handles factorage cotton. I do not know whether factorage is handled by W. D. Stevens or not, but there is a printed tariff. I do not know what firms do business at the Exporters Company. They have a tariff for services for handling factors cotton at those rates (R. 3440). I do not know whether the 5¢ covers the cost of those services; I know nothing further than the tariff and the exhibit (R. 3441). I do not know the difference between handling factors' cotton and the other cotton. I have not been down there very much. Referring to Exhibit A-124, I did not intend to leave the impression that the four days free time given under this item 19 is applied on cotton held in cars at the warehouse facilities. I do not know. I think they charge a regular demurrage scale on that. This applies only to the cotton unloaded on carriers' facilities (R. 3442). I do not know about the charge on cars un-

loaded. I do not know what proportion of the cotton coming into New Orleans is unloaded into the carriers' facilities as compared to the total. I do not know that the great bulk of the cotton goes to the warehouse. When I was connected with the Texas & Pacific, in a busy season, we were hard put to it to get to unload molasses and every other commodity at New Orleans, but I do not know what the capacity of the railroad facilities there are today. I do not think that these railroad facilities are used mainly for holding cotton that the carrier unloads to release the equipment because the shipper failed to surrender his bill [fol. 699] of lading and get delivery within the specified time (R. 3443). I do not contend that this seven days free time is applied against export cotton moving on through export bills of lading. The bulk of McFadden's cotton is concentrated at the ports of Houston and Galveston, so far as I am concerned (R. 3444). We concentrate more cotton at Houston and Galveston than in the interior. I do not know about New Orleans. I don't know whether we concentrate any cotton to speak of at New Orleans.

I think the cotton handled at the ports is assembled for the purpose, largely, of moving it down to the shipside, and I say that if the cotton is concentrated and reshipped where there is a line haul, or road haul involved, that should be paid for if it has been previously concentrated. But I think the carriers very properly should put that cotton down to shipside for delivery to the ship, or for delivery at a point where concentration is taken. If there is a road haul or line haul involved from the point of concentration, a second concentration should be paid for on cotton to New England, the Pacific Coast and the Southeast. There would not necessarily be a line haul to the Pacific Coast, because you have coastwise lines out of Houston and Galveston. There is a road haul from Houston to Galveston, and I think that ought to be paid for (R. 3446). On cotton that goes to shipside for export at Houston and coastwise at Houston and Galveston, I think there should be no charge for that. It would naturally follow that if a road haul, or road service was accorded, there should be a charge for second concentration in the interior, if a charge is continued by the carriers for handling cotton that had been previously concentrated, and our interior friends think,

they say, the arrangement at the port would be a benefit to them, and they would not object to it and they would not feel that they would be discriminated against if that is being done (R. 3447). I could not guarantee that, but I think they are serious when they say that. I do not care [fol. 700] to give information as to the number of bales that our firms have put on board ship at Houston and Galveston during this season, and in the preceding seasons (R. 3454). We have a decided interest if it is 1 bale or 100,000 bales, or 500,000 bales. I will say that we have a substantial movement through Houston and through Galveston (R. 3455). The movement from interior concentrators is in substantially larger quantities than from non-concentrating points. I could not say that the minimum loaded at these concentrating points would be an average of 75 bales. That would be just a wild guess.

Redirect examination:

On Exhibit A-127, referring to the Exporters Conpress and Warehouse Co.'s tariff on factors cotton, I don't know of any discrimination between flat cotton and compressed cotton (R. 3456). The first incoming charge for receiving a bale of flat cotton under the Exporters' Tariff would be 10¢, with storage free for 30 days. If the cotton is compressed, there would be an additional 60¢ for standard density, with seven bands. That is a total of 70¢ (R. 3457). He cannot get it out for that 70¢. There would be a charge for an extra band, if he takes over seven. That would be 5¢ at the Exporters'. If he shipped out by rail, there would be a charge of 10¢. That would be a total of 92¢ revenue, they would get. The markings would come in, and that would be for one side 3¢, and for two sides 5¢ (R. 3458). This would make 97¢ revenue for a standard bale of cotton. I don't believe the Exporters would charge for sewing the heads in connection with standard compressed cotton. Loading, topping, and insurance are not included in that. That is the point I made, that in my opinion, instead of the charge being 60¢ for standard compression at the ports, the charges for the services comparable with the services performed by the interior compresses for 18¢ per 100 pounds, would bring the charge much beyond 60¢. The charge of 10¢ per bale for topping in the Exporters

[fol. 701] Compress and Warehouse Company's tariff is the normal charge for topping (R. 3459). On Exhibit A-124, the New Orleans Emerson Tariff, page 1, Section 3, the carrier is obligated to unload cotton on its facilities. There is no obligation to provide storage or handling service beyond the reasonable limits of their properties and facilities. That would imply a restricted application to unload on their facilities. I do not know whether they actually perform the service of unloading.

Recross-examination:

On the Exporters' Tariff, the item "receiving flat cotton" does not include the matter of receiving cotton (R. 3460). These items are made to cover specific services. We may have some cotton in the Exporters' compress that I bought uncompressed, which had been received for account of another party, and if I want that cotton standard compressed the charge would be 60¢. No receiving nor any of these other items is included. However, under certain conditions, if I bring a bale into the compress under that item, they would receive it and do certain things to it, and there are certain other obligations about tagging it, and laydays, and such things as that (R. 3461). They will receive flat cotton for standard compression for 60¢ as part of the service of compression, under that tariff, and compress it to standard density with 7 bands. Cotton is usually compressed in the interior with 8 bands. I do not know whether 7 bands would carry it to the Atlantics or not. The railroad tariff does not say anything about bands. The compress man puts on the number necessary to make the required density. There would no doubt be more cost than 60¢ (R. 3462). There is also marking and these other things.

WITNESS H. M. BENNETT

I live at Little Rock, Arkansas; I am primarily a cotton merchant; I have various lines of business (R. 3464). I [fol. 702] have been in the cotton business 33 years. I have lived in Arkansas 60 years, lacking a few months. I am connected with the Lesser Goldman Cotton Co. Aside

from the cotton business for a number of years, I was Secretary of the Arkansas Fertilizer Co. I am now Vice-President of that Company. I have had a great deal to do with agriculture in the State. Our Company has a great many investments in the State, and I am State Agent as well as Manager of their Little Rock cotton business. I have also held positions of Director and Vice-President, etc. in different compress companies, and have always been very largely interested in compress matters, taking more or less supervision over compress matters. I am executive director of the American Southern Trust Co., the largest bank in Little Rock. That is not an affiliated business. They have no interest in it. I am President of the Arkansas Cotton Trade Association, for which Mr. Turner spoke the other day (R. 3465). I am also Treasurer and Director of the American Cotton Shipping Association, a combination of all of the cotton exchanges in the State. The bank with which I am connected engages in the financing of cotton. I cannot tell the exact percentage of the cotton financing of Arkansas handled, but it acts as the correspondent of about 65% of the country banks in the State, and through us they get their necessary lines of credit for financing the cotton crop, and other financing throughout the State (R. 3467). In the early nineties, the cotton crop of this State ran from about 600,000 to 700,000 bales. We then had only a very few compresses, and these were of very small capacity, with practically no warehouse facilities. I believe that not more than 25% of the total crop was compressed in the State. The balance of the crop, approximately half a million bales, moved in its flat form by rail or water to New Orleans, Memphis, and St. Louis, on consignment to various cotton factors or commission merchants. The producers and owners of this cotton could have no idea of the price they were to receive. Some months later they would get [fol. 703] an account sale from the commission merchant, showing disposition of their cotton and from the gross proceeds was deducted numerous charges to cover transportation, interest, commissions, weighing, sampling, storage, insurance, and everything conceivable; and then the net proceeds were credited to the shipper's account for supplies furnished, and generally the shipper was left deeper in debt to the commission merchant (R. 3468).

The railroads and other interests wisely saw the necessity of a change in handling cotton, not only to conserve their equipment, but to save southern agriculture from absolute bankruptcy. Concentrating zones were established and the building of compresses at logical points was encouraged. In a few years every town and hamlet in the State had several cotton buyers, competing for and paying full value for the cotton on the spot, all but eliminating cotton factors and commission merchants. The humblest farmer could sell his bale in his home market on a parity with the leading markets of the world. The establishing of these concentrating zones with the publication of through rates to the point of consumption placed all the markets in such zones on practically the same level. Since there were few banks, cash had to be paid for cotton and this was troublesome. It was not long until every town of any size boasted one or more banks (R. 3469). Down to the present time, there has been an increase in cotton production and [fol. 704] a very rapid development of compresses, until today we have 34 compressing and warehousing plants with storage facilities under cover for nearly 700,000 bales, representing investments of about $7,000,000. The records show that for the season of 1924-1925 the total Arkansas crop was 1,086,288 bales, while Arkansas compresses in that season received 1,331,083 bales. For the season 1925-1926 the total crop is given as 1,593,029 bales, and to date of May 7, when this statement was dictated, our compresses had received 1,717,045 bales, and it is reasonably estimated that the total receipts for this season will approximate 1,850,000 bales (R. 3470). This shows that we are not only taking care of the Arkansas crop, but of a good many thousand bales from the border States.

In recent years, the policy of the mills has been to buy in much smaller units than formerly, following a hand to mouth policy. Most cotton merchants of any magnitude just carry an adequate stock of many qualities to best serve their trade. We must buy our year's requirements when the producer wants to sell. No longer do the spinners warehouse and finance their cotton in the east, but this is now forced upon us. It must be admitted by everyone that cotton must be assembled at some point, whether that be a port or the interior, before it can be properly marketed, or

for that matter, transported most efficiently (R. 3471). I recently directed a clerk to take from our files any three invoices from three different towns situated on the three railroads concentrating at Little Rock. These three invoices from the towns of Atkins, England, and Lonoke aggregated 137 bales. Atkins is on the Missouri-Pacific, England on the Cotton Belt and Lonoke on the Rock Island. The disposition of this cotton discloses that 97 bales were shipped to New England mills, 24 bales to Carolina mills, 9 bales to New Orleans for export, 4 bales otherwise disposed of, and on May 7, there were 3 bales still in the stock, less than a month ago when I made this examination. The 43 bales from England, Arkansas, were classed into 24 different shipments (R. 3472). There were only 2 grades, middling and strict middling, but there were 13 different staple distinctions, classed into 13 different staples. The 50 bales from Atkins, Arkansas, were classified into 16 different shipments, 2 grades, and 10 different staple dis- [fol. 705] tinctions. There were 16 outbound shipments out of 50 bales, from September 14, 1925 to May 18, 1926. The 44 bales from Lonoke were classed into 19 different shipments, 12 different staples, and 3 different grades. There were 19 outbound shipments. I gave the clerk instructions to get invoices on early purchases, because I did not want to go into a lot of grade qualifications for color, low grades, and off grades. That will account for there being only 2 grades in the shipments, because this was all (R. 3473) cotton bought in early September by our street buyers in these respective markets, bought from the wagon, 1, 2 and 3 bales at a time. Our practice is to ship in 75 bale lots. I am only illustrating that we brought cotton in from these particular points, and out of so many bales we got so many bales for each marking, but the compress people tell me they come nearer shipping in 75 bale lots than any concentrator. It is an exception that we class out a list of less than 75 bales. That is fairly typical of the cotton business as conducted in Arkansas. It does not increase the cost of compression because the storage takes place on the compress facilities. It is immaterial where it is stored (R. 3475).

In Arkansas, the cotton merchants have their street buyers, who trade directly with the producer, buying in

small units (R. 3478). If bought at a compress point, it is delivered to the warehouse without any transportation service from the railroad, and if at a non-compress point, the day's buying is drayed to the railroad platform and shipped to a compress for concentration. This convenient system permits the assembling of the cotton from many of the smaller markets, enabling the shipper to properly class into carload lots of like grade and character. This concentrating system is the only adequate and economical way of merchandising their cotton not only for the producer, but for the cotton merchant and even more so for the transportation companies. In moving cotton locally to compress [fol. 706] points in concentration, the railroads are able to use any and all sort of equipment, bad order cars, and in times of stress, gondolas or coal cars, and I have known many times when they used common flat cars to get cotton to the compresses (R. 3479). Railroads do not have covered platforms for receiving cotton. It comes into the compresses very often wet and muddy and if it were not properly cared for would inevitably damage seriously. This applies equally whether the cotton is concentrated or transit. The compress warehouses afford storage facilities where the producer may protect his cotton from the elements, uses compress receipts as collateral with the banks, and keeps the wheels of commerce moving. The owner of the cotton, as well as the banks making the loan, wants the cotton stored in some nearby responsible warehouse and not at some port hundreds of miles away (R. 3480). If we did not have these interior facilities, in all [fol. 707] probability the entire crop would be on the market as rapidly as ginned, which would prove disastrous as to price and break down the transportation companies through their lack of ability to handle.

On concentrated cotton the shipper pays directly for every service rendered him by the compress, while on transit cotton every service needful and necessary for receiving cars, preparation for compressing, insurance, marking, and consolidating, etc., is covered by the compression allowance (R. 3481). I believe that compression is valuable and needful to the transportation companies on both transit and concentrated cotton, but so far as the business in Arkansas is concerned, where only about 25 or 30% of the crop moves

for export, I know that the transportation companies receive greater service and value from the compress companies on concentrated cotton than they do on transit cotton. Concentration originated as a transportation necessity, but undoubtedly is of great value to the producer and shipper as well as every other business interest (R. 3482).

Eighteen cents a bale does appear a trifling sum, but it might mean a difference between a profit or a loss to the small shipper handling from 20,000 to 30,000 bales. It would mean to the largest shippers handling from a million to a million and a half bales approximately $200,000. We who buy cotton under the keenest competition know full well that an advantage of only a few cents per bale is all that is necessary to get the business, and with such an advantage competition would soon be eliminated. It is my honest conviction that if this and other preferential advantages are given to port operators, it would only be a short time until a great number of the smaller cotton buyers, now doing a fair and successful business in interior markets would be eliminated (R. 3484). Inasmuch as Arkansas has very little cotton moving to either Houston or Galveston, and no considerable per cent of our crop to New Orleans for export, we have heretofore not been materially concerned in this question, because there were no shipside facilities at New Orleans; but with such facilities at that port, we do protest against the two rate plan, for we believe the measure of service performed by the transportation companies on domestic and export is substantially [fol. 708] the same, and we do not think it fair or just that our export business should be penalized, nor do we think we should in any way be placed at a disadvantage with the port operators or any one else (R. 3486). I do not believe that cotton could be stored and merchandised in facilities other than the compresses, speaking particularly with reference to Arkansas. I think the expense would be prohibitive. The railroads have no facilities for marketing. It would increase the cost both to the railroad, the producer, and the cotton industry; because it would increase the labor, and concentration companies could not go and put in little privileges, and because of lack of facilities for handling it.

Wagon cotton, or cotton originating at the compress point, is somewhere between 37 and 40% of the Arkansas

cotton. There are some compress points where it runs from 90 to 100% wagon cotton, at least 3 or 4. We ship some cotton to port on a port export bill of lading. We also ship on a through export bill of lading. I have no use for domestic rates to the port (R. 3489). What we want is one rate. I have no use for domestic rates to the ports. I suppose I should take advantage of it if I were a little younger.

Cross-examination:

We shipped through Savannah, but I think perhaps in the last two years or more we have not used Savannah. We have used every port from Maine clear on down the coast. We have used Norfolk, but not in recent years. New Orleans seems to be our best port now. I do not remember that we have shipped any through Mobile in recent years, although we have in other years. We have shipped a good deal through Brunswick. In shipping through New Orleans, I think the traffic would be possibly equally divided between the through bill of lading and the export bill of lading to the port (R. 3490). Whether it is a port bill of [fol. 709] lading or a through bill of lading is merely a form of negotiation between the seller and the European buyer, and if the European buyer is out his money longer on a through bill of lading, that is figured in the price. We put the cotton to Europe and on the bar-elhead so I think it is of no consequence since it is purely a matter of negotiation. If we have the option, we figure out what money is worth to us and if it is worth less to us than it is to the European buyer, we probably take advantage of that, but it all resolves itself into the price that the European buyer is willing to pay for the cotton. I would not [fol. 710] say the European buyer would give us the option to ship on a through bill of lading (R. 3491) or a port bill of lading, because there is a difference, small difference so it may be, in the matter of interest, but these people over there are now figuring every penny, and they would not pay us one price for cotton on a through bill of lading and the same price on a port bill of lading, because the port bill of lading is at least worth more to them in the interest they save. Possibly 30% of my company's business is export business. A great many firms in Arkansas do no ex-

port business whatever. I doubt if there are to exceed 10 or 12 shippers in Arkansas doing an export business, 15 anyway. The majority of them deal in specialities, and their entire business is in Canada, New England, and the Carolina mills (R. 3492). I find that Arkansas bills of lading command a premium in the spinning markets. At least, on many sales we make one of the conditions that it must be an Arkansas bill of lading.

At one time I was a bit selfish and felt that we were getting too many concentration points in Arkansas, but when I saw how these compresses located in the very productive districts of the State, where there were approximately 30,000 bales of cotton delivered by wagon to the compresses, directly from the gin, and all of that weight taken off of the railroad companies in concentration, and after I saw how those towns thrived, I reached the conclusion that selfishness was not a good thing and that every one of these plants in Arkansas, with the exception perhaps of one or two that are not well managed, are very necessary for the industry as a whole. I will go further and say that I do not think we need any more compress companies. I believe every logical point for a compress in Arkansas has been covered (R. 3493). There are a very few points where they have very small production of cotton and small handling at the compress. They are the exceptions. In the development of the interior markets, we have competition with port merchants, quite a good deal of it, but the port merchant, as a rule, is not competing for the same kind of cotton that the shipper to the American mills is buying. The port merchants buy mainly what we call "bread and butter" cotton from certain areas and territories where the cotton is of low staple and is not the cotton that is so desirable for the American trade. The concentration charge in Arkansas (R. 3495) is really so small that if the [fol. 711] former is at all efficient in his methods he would not care to haul it that long distance for the 25¢ a bale that may be the difference. There are a few penalties on some of the roads, but (R. 3496) as a general proposition, we have concentration zones that may extend for 50 miles around a compress center and all other towns in that zone pay the same rate to the compress, so a man 30 miles up here has just the same rate to the compress point as one

10 miles up. The farmer very often considers 2 bids for his cotton and if he can get 25¢ more for his bale at a compress town than at a town 15 miles away, he might haul it down there, but it would not be a very wise thing for him to do. If he had his cotton all in and had the winter to get it to market, all of those things would enter into his mental calculation (R. 3497). In the early days that cotton nearly all went to factors located at St. Louis, Memphis, and New Orleans. Mr. Lesser and Mr. Goldman are interested in interior compress facilities through I don't believe they have ever controlled a mojority of the properties in which they are interested. My firm became interestd in compresses, and served to assist in building up the interior concentration points (R. 3499).

WITNESS F. J. HEREBLIX

I am Superintendent of the Southern Compress & Warehouse Co. My duties are such as to bring me in contact with all the operations of the warehouse in the handling of cotton within the Southern Compress & Warehouse Company's warehouses at Galveston and Houston. I have prepared an exhibit showing the intra-plant's cost of bringing cotton out of storage and trucking to trucks at those points. I have shown the maximum and minimum distances and the cost per bale. The exhibit is true and correct to the best of my knowledge and belief (R. 3500). It is Exhibit A-130 containing 4 pages.

Cross-examination:

I have jurisdiction over the Houston plant. We took the [fol. 712] average time required to truck to the point where the cotton is loaded at the Houston plant, getting the average from our operation reports. We keep the operation report by turning in memorandums of individual costs for different operations. We do not keep a separate ac- [fol. 713] count of the compress operations from the other operations (R. 3501). We do not keep the account so we can tell what part of the labor went in handling cotton to the compress and what part went into handling it to the

car; they are so closely allied that we find that impossible. We have it all charged up to labor in the whole. The insurance capacity of the Galveston Warehouse is 20,000, but the actual daily capacity is about 16,000. The dimensions of that warehouse are 1016 feet long and 220 feet wide. It is about 6 blocks from the nearest pier and about a mile and a half from the farthest pier. We dray our cotton down there (R. 3502). The dray comes into our warehouse, right down the middle, just as Moody and Kempner handle their cotton. We put the cotton out on a platform next to where the dray comes through. We undertake to get the dray as close as we can to where the cotton is in all cases. I would not say that we can usually get it pretty close. Some times we can and some times we cannot. I do not know how many bales we put on a dray; different drays hold different numbers. We do not load it ourselves on the dray. They handle that (R. 3503). The dray man receives the cotton on his dray whe-ver I put it out for him and he comes along and picks it up and puts it on his dray and takes it on. We do not use drays at Houston; we have used them, but they are not practical. We press the cotton at Galvestion as a rule when it goes out, and if we can we place it somewhere near the press to be picked up by the dray. We can do that unless we are blocked. We have had lots of cotton in there that would not pay us to move. We compress on an average in 10 hours about 1000 bales; about 100 bales an hour (R.. 3504). The drays cannot take it off as fast as we can compress it; I do not know why they cannot do it. We have no required accumulation there before the drays take it off (R. 3505). They may have 20 bales of cotton when the drayman comes in, and they may have no cotton at all; they may have 500 bales when he comes in. Any situation might come up. If we had 500 bales, we would not have it farther from the drays than we had it. He would pick it up as close as he could get his dray. At our Houston plant, in loading our cotton out there, we put the cotton in the nearest suitable car. The nearest car may not be suitable. We make more empties than we require in shipping out, but all of them could not be loaded. There are cars that are not suitable. We do not make more suitable empties than we require for loading out. We have to order in empties (R. 3506). That is not

[fol. 714] true during the rush of the season. We find even during the rush season that we may have to bring in cars on account of a great number of bad orders. We order those cars into the track (R. 3507).

WITNESS J. K MOORE

I live at Dallas, Texas; I am manager of the transportation department of the Dallas Chamber of Commerce. I was for a time connected with the traffic department of the Rock Island. I was at one time cost statistician for the Railroad Commission of Oklahoma. That was not the title, but I had two or three years experience in the accounting department of the Corporation Commission of Oklahoma, during which time I was engaged in the preparation and analysis of cost statistics of both utilities and common carriers (R. 3528).

Exhibits 49 to 57, which have already been introduced into the record at Houston, were prepared by me, and in connection with these exhibits, we desire to submit corrected Exhibits 52, 53, 56 and 57. A number of these exhibits carry in the heading "cotton handled or compressed for stockholders." That is incorrect. The cotton was compressed for railroads, and the bales of cotton shown in these exhibits compressed by the railroads were owned by the stockholders and the compression was done for account of the railroads.

Exhibit A-49 was prepared under my direction (R. 3529). The source of the information was the original tariff of the compress company's name. I did not examine all of the original tariffs sent me by the compresses. In filing this exhibit, I attempted to select different points throughout the State and points operated (R. 3530) by a chain of compresses. In my opinion, the tariffs shown in Exhibit A-49 are throughly representative of compress tariffs furnished me which cover most of the compresses operating in the 4 States. I examined a great number of them. Exhibit A-49 is true and correct to the best of my knowledge and belief (R. 3531). Exhibit A-131 is a list of Chamber of Commerce organizations and compress companies for whom

[fol. 715] my testimony is offered. Exhibit A-132 is a statement showing the production of cotton in thousands of bales, by counties, and by States, for Texas, Oklahoma, Arkansas, and Louisiana west of Mississippi River for the years of 1916 to 1925, both inclusive. There is also shown a 10 year annual average in the last column. It should be observed that the 1925 figures do not include cotton ginned subsequent to January 16, 1926. These figures were compiled from statistics prepared and published by the United States Department of Agriculture, Bureau of Agricultural Economics, and were checked by the Chief Clerk of that department (R. 3536), as indicated on the last page. The purpose of this exhibit is to show the fluctuation in production by counties and by States in the areas herein involved. In Texas, the average production for the 10 year period, per county, was 18.6 bales. During this 10 year period, the average spread between the lowest production and the highest production, per county, was 25.92 bales, or materially in excess of the average production. I invite particular attention to the substantial drop in production for 1925 under the previous year in the following counties in Texas, the amounts being in bales. Austin from 26,000 to 13,000; Bastrop from 29,000 to 7,000. Bell from 77,000 to 15,000. Bexar from 28,000 to 3,000. Bosque from 23,000 to 13,000. Brazos from 21,000 to 9,000. Burleson from 27,000 to 8,000, Caldwell from 53,000 to 5,000. Coryell from 35,000 to 7,000. Falls from 76,000 to 23,000. Fayette from 41,000 to 11,000. Gonzales from 45,000 to 8,000. Guadalupe from 45,000 to 1,000. Karnes from 50,000 to 15,000, Lavaca from 38,000 to 10,000, McLennan from 109,000 to 34,000. Milam from 63,000 to 11,000. Travis from 47,000 to 3,000. Washington from 29,000 to 11,000. Williamson from 113,000 to 16,000. Most of these countries are in what was known as the drouth area, but the fluctuation from 1924 to 1925 is not confined to the counties in the drouth area. There is hardly to be found a county in the State but what had during the 10 year period a substantial fluctuation in production. There is also a very substantial fluctuation in the total production in the State for the ten year period. Following is a percentage of the production for the years named to the 10 year average for Texas 1916—104 per cent; 1917, 88 per cent; 1918, 76 per cent; 1919,

[fol. 716] 87 per cent; 1920, 122 per cent; 1921, 62 per cent; 1922, 90 per cent, 1923, 122 per cent; 1924, 139 per cent; and 1925, 112 per cent. The average production for the three year period of 1922-1923 and 1924 was 4,171,000 in Texas. This was 117 per cent of the ten year average. In Oklahoma the average per centage for the 10 year period was 16.29 bales. The average spread per county between the low and the high production was 26.89 bales. The following are the percentages of production each year to the ten year average: 1916, 86 per cent; 1917, 99 per cent; 1918, 60 per cent; 1919, 106 per cent; 1920, 139 per cent; 1921, 50 per cent, 1922, 65 per cent; 1923, 68 per cent; 1924 157 per cent, 1925—170 per cent; the 8 year average to 1924 was 809,000 bales, while the production for 1924 was 1,511,000 bales or almost 100 per cent in excess of the 8 year average up to that year. The average production in Arkansas for the 10 year period was 14.02, while the average spread between the low and the high production per county was 14.52 bales. The following is the ratio of the production of each of the years to the 10 year average: 1916, 111 per cent, 1917, 95; 1918, 97; 1919, 87; 1920, 119, 1921, 78; 1922, 100; 1923, 62; 1924, 108; 1925, 145. The average production in Louisiana per county for the 10 year period was 10.04 bales, while the average spread between the low and high production per county was 14.27 bales. The following is the ratio of the production for the years named for the 10 year average: 1916, 95; 1917, 136; 1918, 122; 1919, 61; 1920, 82; 1921, 60; 1922, 73; 1923, 80; 1924, 105; 1925, 186; That is a spread between 61 per cent for 1919 and 186 per cent for 1925 to the 10 year average. The average production for the 10 years in the four States named was 6,000,000 bales in round numbers. The ratio of the production for the years named to the 10 year average of 6,000,000,000 bales was as follows: 1916, 101; 1917, 94; 1918, 80; 1919, 88; 1920, 121; 1921, 62; 1922, 87; 1923, 99; 1924, 134; 1925, 132. Exhibit A-133 shows the world production of cotton for the years 1916 to 1925, production in the United States and in the States of Texas, Oklahoma, Arkansas and Western Louisiana for a similar period and a 10 year average. In the second section is shown the consumption in the United States, production over con-
[fol. 717] sumption and the production in the four South-

western States named. The southwestern production for a 9 year average is slightly higher than the excess production of the United States. In the last section there is shown the ratio of the production in the United States to the world; in the southwest to the world, and in the southwest to the United States. The greater part of the exportable surplus of cotton produced in the United States is produced in the 4 States involved herein. These four States for a 10 year average produced 28.66 per cent of the world's supply of cotton and 51.18 per cent of the production of the United States. Exhibit A-134 is a statement showing production and consumption of cotton in bales in Alabama, Georgia, Mississippi, North and South Carolina and Tennessee for the years 1921, 1922, 1923, 1924 and 1925. The five year summary is shown at the bottom of the exhibit. From the summary it is noted that during the 5 year period both North and South Carolina consumed more cotton than they produced. In the aggregate for the 6 States the consumption amounts to 74.72 per cent of the production for this 5 year period. In Georgia it will be noted that the consumption during 1923 and 1924 substantially exceeded the production for the 5 year period. Exhibit A-135 is a companion exhibit to the preceding one and shows production and consumption of cotton in Texas, Oklahoma, Arkansas and Louisiana during the same 5 years as used in the preceding exhibit. The consumption in Arkansas and Oklahoma was not sufficient to justify a showing for those states and whatever consumption there was in those States was included in all other States. The consumption in Texas and Louisiana amounted to 589,394 bales during the 5 year period, or 1.98 per cent of the total production in the four States for the 5 year period. Only 350,563 bales were reported as being consumed in all other States. Exhibit A-136 consisting of 10 pages is a statement showing cotton handled by reporting compresses in Texas, Oklahoma, Arkansas and Western Louisiana during the season named. The witness has indicated the number of bales of railroad trasit cotton handled, the bales of railroad concentrated cotton handled, and the total bales handled. He has next shown the ratio of the railroad transit total, the ratio of the railroad concentrated to the total [fol. 718] and the last column pages 1 and 2—the ratio of

city of wagon cotton handled to the total. Not all of the compresses in operation today have been in operation since 1913. Many of the compresses which were in operation ruding those years do not have available records from which a division of the total cotton handled between railroad transit and railroad concentration, could be made. This is due to changes in ownership, destruction of records by fire or flood, etc. For this reason he assembled the reports for compresses making complete returns for the 12 years. He then added to this the report for the compresses making complete returns for 11 years and so on down the line. Pages 1 and 2 is a composite statement for the four States. For Texas we have 10 compresses making complete reports for 12 years. Here the ratio of the railroad transit to the total fluctuated up and down ranging from 7-7/10 to 12.6 per cent prior to 1919. From 1919 to 1924 there is a very marked increase in the ratio of railroad transit with a precipitous rise in 1924. This increase in the ratio in the transit to the total is accompanied by a corresponding decrease in the ratio of the railroad concentrated cotton to the total. Starting with 1919 the railroad concentrated dropped substantially with the precipitous drop in 1924. The showing for the 10 compresses does not differ substantially from the showing for the other compresses of later years. For example on page 5 under the last two columns for the 30 presses handling in excess of 1,000,000 bales each year and handling a million and a half bales in round numbers in 1924—there was a substantial increase in the ratio of the railroad transit each year with a precipitous increase in 1924 with corresponding reductions in the ratio of the railroad concentrated cotton to the total. On page 6—the situation at Oklahoma compresses is depicted. The situation is very substantially different at Oklahoma presses than has been shown to exist at the Texas compresses. For example—the ratio of the railroad transit did not increase to the same extent as in Texas. There is however a very precipitous increase for the year 1924 in the railroad transit with a corresponding reduction in the railroad concentration ratio. The ratio of the railroad transit in Arkansas is very substantially lower than in [fol. 719] Oklahoma and Texas and correspondingly the ratio of the railroad concentrated cotton is substantially

higher. There is however a substantial increase in the railroad transit for the year 1924 with a corresponding reduction in the railroad concentrated ratio. Pages 9 and 10 show the situation at Louisiana presses. There are but few presses in Louisiana, and we have reports from only a limited number.

I understand the two rate plan went into effect to Texas ports in 1917. It began to show its effect upon the concentration of interior cotton in Texas about 1918 or 1919. The shipside facilities were opened at the ports in 1923. At that time, there was another considerable dropping off in the concentrated cotton in the interior of Texas (R. 3545). On sheet 4 of the Exhibit you can determine the ratio of wagon cotton handled by deducting from the total bales handled, the total number of bales of railroad transit and railroad concentrated.

Exhibit A-137 is a series of 10 graphic charts showing the trend of railroad transit, railroad concentrated, and total cotton compressed by interior compresses in Texas, Oklahoma, Arkansas, and western Louisiana (R. 3546). Exhibit A-137 reflects graphically the exact information shown on the preceding exhibit. The first page is a composite trend of all the compresses reporting in the 4 States as reflected on pages 1 and 2 of the preceding exhibit. It will be observed that there is a fairly consistent relationship in the trend of the three lines up to the year 1921. During that year the railroad concentrated line did not rise in a corresponding degree with the other two lines. For 1924 the railroad concentrated line drops below the railroad transit line. The graphic line shows the increase in the total cotton compressed, the drop in the concentrated cotton and a corresponding increase in the railroad transit (R. 3548). There is no duplication in the figures for railroad concentrated cotton and railroad transit cotton. They are separate figures entirely; and neither originate at the compress point. Page 2 deals with Texas compresses only. It will be observed (R. 3548) that the railroad concentrated and railroad transit lines cross between 1921 and 1922, forming a sort of scissors, and for 1924, while the total cotton handled and railroad transit lines rise precipitately, the railroad concentrated line actually [fol. 720] dropped. Page 3 deals with Oklahoma and shows

a fairly consistent relationship between the three lines until 1924, when the railroad concentrated lines failed to rise in the same degree as the other two lines. Page 4 deals with Arkansas, and it will be observed that the railroad transit line is very near the bottom of the page. Page 5 deals with Louisiana. It will be observed that the railroad concentrated lines dropped substantially in 1924, while the other two lines rose precipitously. I understand that the rates ordered by the Commission in Docket 11,965 went into effect August, 1923. That had the effect of equalizing the Texas ports for Louisiana cotton as to storage. It projected into Louisiana the two rate plan to Texas ports. On the first five pages of this exhibit we have shown all (R. 3549) presses reporting for each of the years designated. On the succeeding five pages, the charts deal with the same compresses for all years, and I think a more correct picture can be presented by comparison of the identical compresses for the various years (R. 3550).

We start with the year 1919 on the last five pages. Page 6 is a composite statement showing the trend of 56 compresses in Texas, Oklahoma, Arkansas, and Louisiana, as shown on page 2 of the preceding exhibit. It will be observed that the railroad transit cotton amounted to 330,000 bales in round numbers in 1919, while it rose to 1,275,000 in 1924, or an increase of 940,000 bales. The railroad concentrated cotton amounted to approximately 1,329,000 bales in 1919 and dropped to 1,209,000 in 1924. The total cotton handled rose from 2,185,000 bales in 1919 to 3,131,000 in 1924 (R. 3551). Page 7 shows the situation at 33 Texas compresses. Here it will be observed the railroad transit increased from 235,000 bales in 1919 to 833,000 bales in 1924, while the railroad concentrated cotton dropped from 783,000 in 1919 to 570,000 in 1924. The total cotton handled [fol. 721] increased from *from* 1,326,000 bales to 1,765,000 bales, but the 33 Texas Compresses received no benefit in the way of concentration for this increase, but on the other hand actually suffered a decline of 213,000 bales in the total cotton concentrated. In talking about the decline of the concentration, I do not have any mention of concentration which takes place because of wagon cotton brought to the compress point. I am only taking the storage and the concentration. Page 8 shows the situation at nine Okla-

homa Compresses. It will be observed that the railroad transit rose from 83,000 in 1919 to 358,000 in 1924, while the railroad concentrated only increased from 234,000 to 279,000 in 1924. The total cotton handled increased from 387,000 in 1919 to 764,000, or almost 100% in 1924, while the railroad concentrated increased only 35,000 bales. The railroad transit cotton (R. 3552) increased approximately 350%. I think that the two rate plan has not been as effective on the Oklahoma cotton as on the Texas cotton during the period shown in these Exhibits, for the reason that at that time a considerable portion of the Oklahoma crop moved to New England all rail. The decision putting in through rates through the Texas ports to New England went into effect in 1925, but that would not be reflected in this Exhibit. Page 9, shows the situation at 11 Arkansas Compresses (R. 3553). It is to be observed that the railroad transit cotton rose from 10,000 to 53,000 bales in 1919 to 1924, the railroad concentrated cotton increased from 292,000 to 339,000 bales, while the total cotton handled increased from 445,000 to 534,000 bales. It will be observed that the ratio of the railroad concentrated cotton handled amounted to 65.8%, as shown on page 7 of the preceding Exhibit for 1919, and that this only decreased to 63.5% for 1924, a negligible decrease. This illustrates the very striking difference in the situation in Arkansas as compared with Oklahoma and Texas. Page 10 shows the situation in Louisiana for three compresses. The cotton handled by these three compresses represents such a small proportion of the total handled in western Louisiana, that I am not in a position to say that it would be representative. However, we have shown the situation in order to make a uniform showing as to each of the states herein involved. It is the contention of the interior interests that the very substantial decline in the railroad concentrated [fol. 722] cotton at interior points in the area involved (R. 3554) is largely due to the two rate plan. It would be impossible for me especially not being in the cotton business and knowing very little about the marketing of cotton, to say just what brought this about. I am not attempting to try to carry it out or go down to the bottom of this or say just exactly what these various causes were that produced this effect. I am showing the effect.

Exhibit A-138 consists of one page, and is a statement showing the trend of railroad transit and railroad concentrated cotton handled by individual compresses located at Greenville, Ft. Worth, Dallas, and Italy, Texas, for the twelve seasons ending in 1924-25 (R. 3556). At Greenville it will be observed that the ratio of the railroad transit cotton rose from 20.82% in 1921-22 to 57.99% in 1924-25, while the ratio of concentrated cotton dropped from 64.15% to 30.25% during the same period, without a substantial change in the city cotton handled. The railroad transit cotton increased from 9706 bales in 1913-14 to 110,596 bales in 1924-25, while the railroad concentrated cotton dropped from 111,061 bales in 1913-14 to 57,664 bales in 1924-25. The total bales received in 1913-14 was 137,130; the total bales received in 1924-25 was 190,732, about 60% decrease in the railroad concentrated cotton accompanied by a tremendous increase in the total bales received (R. 3557). The railroad transit cotton increased over 400% (R. 3559) from 1912-13 to 1924-25, while the railroad concentrated cotton dropped approximately 60%. During the meantime there was a big increase in the production and the total cotton handled. At Ft. Worth the railroad transit ratio rose from 21.48 in 1921-22 to 51.38 in 1924-25, while the concentrated dropped from 74.75 to 47.11 during the same period. At Dallas the railroad transit ratio rose from 19.41 in 1921-22 to 57.19 per cent in 1924-25, and the railroad concentrated dropped from 74.56 to 40.74 during the same period. He has shown Italy as the bottom of the [fol. 723] page to show the reduction in concentrated cotton during the past three or four seasons is not confined to the larger compress at concentrating points. The railroad transit ratio rose from 18.45 in 1921-22 to 60.28 in 1924-25, while the railroad concentrated dropped from 48.29 in 1921-22 to 17.08 in 1924-25. In 1924-25 Italy handled approximately 4,000 more bales than in any of the previous years shown and yet the railroad concentrated cotton was but 500 bales in round numbers over the previous year which was the lowest of any of the years shown. The railroad transit ranged from 11,732 bales in 1913 to 30,664 bales in 1924-25. The concentrated dropped from 16,459 bales in 1913 to 8,696 bales in 1924-25. Exhibit A-139 consists of 10 pages and is a statement showing cotton received

by interior compresses in Texas, Oklahoma, Arkansas and [fol. 724] western Louisiana during the seasons 1922-23, 1923-24 and 1924-25, divided between railroad transit, railroad concentrated and city or wagon cotton. Here is a record of 14,083,213 bales of cotton received by the reporting compresses during the three seasons named. The ratio of the city or wagon cotton received to the total cotton received was 29 per cent for the first season, 26.8 per cent for the second and 26.2 per cent for the third season, total for the three season 27.2 per cent. City and Wagon cotton go down at the same time. The reporting compresses thus handled 3,825,471 bales of city or wagon cotton, saving the railroads the cost of loading providing and maintaining facilities for the receipt of such cotton, and the cost of handling this volume of cotton into compress points in light loads. This is a most important factor, and one which should not be lost sight of in (R. 3561) considering the value of compression and the operation of these interior compresses to the carriers. It would cost the railroads a vast sum of money to provide facilities for the receiving of cotton at these compress points where the compresses now receive cotton on their platform. It would also add materially to the expenses of the carriers if they were required to load this city cotton. How much additional investment or how much additional operating expenses would be incurred, would be difficult to estimate (R. 3562). I understand that the rate on wagon cotton, compressed at the delivery points, is 18¢ less (R. 3563). In the aggregate, it pays the same rate. In actual practice, I understand that the railroad pays the compress in all instances, and collects the full 80¢ from the shipper (R. 3564). Exhibit A-140 consists of 8 pages and is a statement showing the loading of inbound and outbound shipments of cotton to and from compresses located in the interior of Texas, Oklahoma, Arkansas and western Louisiana. Page 1 is a summary for the various states and for the three seasons named. The remaining pages reflect the details making up the totals brough forward to page 1. The ratio of the inbound loading to the outbound loading for 1922-23 was 42.2%; for 1923-24, 40.7%; and for 1924-25, 41.2%. We have here a record of the inbound loading of 9,356,901 bales, which

average 27.6 bales per car and we have a record of outbound loading of 12,405,375 bales, or an average of 67 bales per car. It will be observed that the spread between the in and outbound loading is substantially the same in each of [fol. 725] the four states named. The spread has not varied substantially during the three seasons. The difference between the number of bales inbound and outbound (R. 3565) is represented in the city or wagon cotton, and the difference between the carry-over at the beginning of the first season and at the end of the last season named. I do not know whether the loading would be the same for a 20 mile haul on flat cotton as though they were going to send it 500 miles. I think that would depend upon the amount of cotton they had to go.

Exhibit A-141 is a statement showing in column 1 the compress point, column 2 total shares outstanding, column 3, shares owned by cotton merchants; column 4, total bales cotton handled during seasons 1922-23, 1923-24 and 1924-25; column 5, total bales railroad concentrated cotton concentrated for (R. 3566) stockholders during the three seasons; column 6, the ratio of column 5 to column 4; column 7, concentration charges for the year 1924-25; and column 8, storage charges for 1924-25, for Texas compression (R. 3566). This Exhibit tabulates information for 73 compresses. Reference marks just following the name of the compress points are explained on sheet #2. Each of these reference marks represents a chain of compresses operated under one management, and by one corporation or individual, or co-partnership. It will be observed that we have omitted duplicating shares owned for one corporation, individual or co-partnership that controls more than one compress. We have reduced the 15,000 shares outstanding with $10.00 par value for Victoria to 1,500 shares outstanding based on $100.00 par value per share. This was done in order to get at a fairer comparison of the total shares owned with the shares owned by the cotton merchant. Out of a total of 9,139,155 bales, these 73 compresses concentrated for their stockholders 504,381 bales, or 5.52% of the total number of bales handled. It will be observed that cotton merchants own 47.61% of the total shares of stock outstanding. Compresses concentrating railroad concentrated cotton for stockholders had out-

standing 59,780 shares of which 30,993 shares were owned by stockholders. This represented 51.85% of the total shares outstanding. It will also be (R. 3567) observed that [fol. 726] compresses where no railroad concentrated cotton was concentrated for stockholders had outstanding 29,568 shares, of which 11,549 or 39.06% was owned by cotton merchants. The concentration charge, as shown on sheet 3, ranges from 20¢ to 35¢ per bale, but there is a difference in the amount of free storage allowed. After taking into consideration the free storage provisions, it is difficult to determine any relationship between the charges for concentration and the amount of cotton, or per cent of cotton concentrated for stockholders. It is also difficult to find any definite relationship between the ratio of the shares owned by cotton merchants to the total shares owned and cotton concentrated for cotton merchants, at any of these individual presses. In connection with columns 7 and 8, we show a key under column 7-A, which is the concentration charge for Abilene. We show their storage charge, key-1. If you go to sheet 3, you will find that A equals a concentration charge of 25¢ per bale, excluding 15 days free storage. Under the key to storage charges, you will find key 1 carries 25¢ per bale per month or a fraction thereof. If the cotton were held there 16 days, the total charge would be 50¢ per bale, and it can be determined from (R. 3563) these keys in each case what the charge for concentration and storage would be.

Exhibit A-142 is a statement showing ratios of cotton owned by stockholders and received by Texas compresses during the three seasons 1922-23, 1923-24, and 1924-25, to the total cotton received. The ratio was 12.92%. The cotton owned by stockholders and received at Texas Compresses exceeded the cotton concentrated for stockholders at these Texas Compresses by 709,106 bales during the three seasons named. 709,106 bales of cotton *was* received at these compresses which was owned by stockholders which went elsewhere for concentration. Wagon Cotton is not considered in either one of the Exhibits, in the second column (R. 3569). Exhibit A-143 shows similar in- [fol. 727] formation for Oklahoma Compresses. Most of these compresses are owned by the Traders Compress Company and the tariffs of this company are set forth in Ex-

hibit A-49. The cotton merchants owned 53.08 per cent of the total shares outstanding in these Oklahoma compresses. They concentrated for stockholders during the three year period only 17.31 per cent of the total cotton handled. The figure 12.34 should be corrected to read 17.31. Exhibit A-144 shows cotton owned by stockholders and received at Oklahoma Compresses during the three seasons 1922-23, 1923-24, 1924-25 compared with the total bales received. The ratio was 22.27 per cent compared to 17.31 concentrated which means they received 97,326 bales for stockholders in excess of that concentrated for stockholders.

Exhibit A-145 is a statement showing number of bales of cotton compressed per day operated by 36 Texas Compresses for the three seasons 1919-20, 1920-21, 1921-22, compared with (R. 3570) the seasons of 1922-23, 1923-24, 1924-25. It shows that during the first period the average bales compressed per day was 144.7 bales, while for the last three seasons the average rose to 180.6 bales. Exhibit [fol. 728] A-146 shows similar information for compresses operated in Arkansas and Oklahoma. It shows that the bales pressed in Arkansas were but very little higher during the last than the first three seasons. However, in Oklahoma the average rose from 156.3 for the first period to 191.1 for the latter period (R. 3571). In connection with these two Exhibits, the Houston Cotton statement issued July 31st, 1925 by the Houston Cotton Exchange, (R. 3571) Board of Trade, indicates that there were compressed during the season of 1924-25, 2,377,844 bales. On the basis of 11 facilities in Houston, that would amount to 216,167 bales per facility. And on the basis of 300 days for the year, it would represent 720 bales compressed per facility per day.

Exhibit #A-147 consists of 5 pages and relates to weather damage tests made by the United States Department of Agriculture, Dallas, Texas, and Jefferson, Ga. The first two pages are an exact copy of an article appearing in Acco Press, official publication of Anderson Clayton & Company, and relates particularly to the tests made at Jefferson, Ga., details of which appear on pages 4 and 5. The purpose of this Exhibit is to emphasize the value of warehousing of cotton to get it away from the country damage.

Exhibit A-148 is a copy of Advice Letter #[illegible]1 issued by (R. 3572) the Traffic Department of the Houston Cotton Exchange and Board of Trade, dated August 17th, 1925, relating to the Commission's decision in Docket 14940. To this Advice Letter is attached a statement purporting to show the effect of the Commission's decision upon the water front and the up town or back of the water front compresses. On the third page of the Exhibit, it undertakes to show the effect of the decision upon interior concentrating points. The letter fails to point out other advantages now enjoyed by the water front facilities, which would not be disturbed under the one rate plan. The one rate plan would not place the water front facilities under the necessity of preparing and filing concentration claims, such as is now required of the interior concentrator and which would be required of him under the one rate plan. The water front facility would under the one rate plan maintain its present advantage over the interior facility in that the former pays in only one rate and is not out addi- [fol. 729] tional rate when cotton is exported. The interior concentrator must pay in the local rate when cotton is received and pay the local rate out when cotton is exported and file concentration claim for the difference between the total amount paid and the through rate origin to destination at the port.

Exhibit #149 is a copy of Mr. F. R. Dalzell's testimony on redirect examination in Docket 14,346 relating to indirect (R. 3573) service performed by carriers in connection with transportation of cotton. Mr. Dalzell there stated: "There are hundreds of departures from that (the Texas Commission Rules for out of line or back haul service) but in every instance the departures are voluntarily made on the part of the carrier, in order to meet either competition of the other roads, or its own convenience."

Exhibit A-150 is a copy of brief filed by the Oklahoma Cotton Growers Association, the Houston Cotton Exchange, and (R. 3574) Board of Trade in Fourth Section Application 464 et al., pending. The purpose of these two Exhibits is to show a conflict in the testimony offered in this proceeding, and that offered in proceedings in those other cases. Exhibit A-151 is a statement consisting of eight pages showing (R. 3575) distance between compresses

on individual roads in the territory here involved. On the last page we have shown an average distance of 58 miles. Certain corrections and additions reduce the average distance to 55 miles. This Exhibit was compiled by taking the Santa Fe, for example, as locating the northernmost compress, then taking the distance from that compress to the next compress in line of transit to the ports, and followed the same process with the other lines, and avoided duplication (R. 3576). There are certain backhauls permitted under concentration service.

Whether or not a charge is made for transit privileges [fol. 730] on other commodities throws but little light upon whether or not it is reasonable to assess a charge for the concentration of cotton. Consideration should be given to the peculiar circumstances surrounding the transportation and marketing of the particular commodity, to the manner in which the rates are constructed and to the areas of production and consumption. With but one exception, there is no similarity of transportation characteristics between cotton and the other commodities enumerated by Mr. Dalzell in his testimony. Cotton is the only commodity on [fol. 731] which the interior concentration very largely takes place where the cotton is compressed for the convenience of the carrier, thereby involving no additional physical operating service. With but one possible exception, which is poles or lumber creosoted in transit, cotton stands alone in another important respect, namely, an increase in the outbound load from the concentrating point. The area of production and consumption of cotton is not at all comparable with that of any of the other commodities named. The principal market for southwestern cotton is in foreign lands, and rates to such foreign lands are the combination of rail rates to the port and ocean rates beyond. Rates from Texas producing points to the important consuming points in New England, are generally based on the lowest combination over any one of the Gulf Ports. The principal markets for the other commodities named are domestic and generally through rates, substantially lower than the combination, are in effect from points of production to points of consumption (R. 3582). Mr. Dalzell's explanation at page 1213 of the Record as to why there is no charge for stopping of cottonseed oil for re-

fining, reconditioning, inspecting, barrelling, etc., furnishes a very close parallel with the necessity for continuing free concentration privilege on cotton at interior points (R. 3583). The rates on cotton are made on combination over the ports, and if there had been a charge made for stopping cotton for concentration at interior points, it would simply have stopped the concentration at interior points, and all of the concentrating would necessarily have been done at the rate-breaking points, such as the ports of Houston, Galveston, and New Orleans, though it became impossible to make a transit charge (R. 3584). The actual effect of the two-rate plan is to place a penalty on interior concentration of 100%. Of all the commodities accorded transit privileges, the greatest volume of movement is grain. Free transit privilege is almost universally accorded this commodity. In connection with the transit privileges, accorded to other commodities, generally the effect of the transit privilege is to reduce the weight per car from the transit point. The minimum weight on wheat is the marked capacity of the car, which runs from 50 to 100 thousand pounds, while the minimum weight on flour is 40,000 pounds. The average weight of wheat per car is in excess of 80 thousand pounds, while the average on flour [fol. 732] is slightly in excess of 40 thousand pounds. Frequently two cars of products are made up from one inbound car of wheat or corn. The fabrication of iron and steel in transit has the effect of reducing the load from fabricating point and frequently one car containing from 72 to 100 thousand pounds of unfabricated steel will be fabricated and shipped out in two cars. Sugar is frequently received in 60 thousand pound lots at storage points and shipped out on the lowest minimum available, which in this general territory is 33 thousand pounds. We have a reverse condition in this respect in these other commodities than is found to be in cotton where the concentration at interior points greatly increases the load out from the concentrating point. The Commission in Wool Rate Investigation of 1923, 91 I. C. C. 283, found that approximately 90 per cent of all the wool produced in the western territory ultimately finds destination east of the Buffalo-Pittsburgh line and north of the Patomac River. Through rates lower than combination over river crossings or the ports are in

effect from all this western territory to the consuming territory in the east. Moreover, the Commission in the Wool Rate Investigation just cited found that a very substantial portion of the wool consumed in the Boston area was shipped out in the original package. For this reason the fact that there is a charge for transiting wool and mohair is in no wise a justification for making a similar charge for concentrating cotton in transit. I have examined practically all tariffs in effect in this territory according transit privileges on all commodities. The rules and regulations in connection with concentration of cotton in transit do not differ materially with the rules and regulations in effect on other commodities. The time limit is generally 12 months. Substitution of tonnage is generally permitted. Change of ownership is generally permitted. Substantially the same records of receipts and shipments are required. There is one substantial difference in the application of rates that is worthy of mention and consideration. On cotton the shipper is required to pay the local rates in and local rates out and file claim for the difference between the total paid in and the through rate from point of origin to destination, while generally on other commodities accorded transit privileges the shipper only pays the [fol. 733] balance out. If a penalty for interior concentration is applied on shipments moving to the ports and not on shipments going to New England or to the southeast, a large part of the cotton moving to the ports would escape the penalty because cotton delivered at compress points, by wagon or truck, which amounts to 27.2 per cent, could be substituted for tonnage originating at non-compress points. This would enable shippers concentrating their efforts at points where a very large percentage of the cotton handled is city cotton to escape in all probability the penalty on all cotton going to the port, while the shipper doing business at a point where only a small per cent of the cotton is city cotton would escape the penalty on but a small per cent of his business. If a penalty is applied on shipments moving on through rates to New England the port concentrator would escape the penalty because the rates from Texas at least are generally on a combination over the ports, while the interior concentrator would be

required to pay the penalty. In the event a penalty is prescribed for interior concentration on cotton going to the ports, it seems to me a similar penalty would have to be attached on cotton going to New England or Southeastern States, and that would result in the anomaly of penalizing cotton going to New England or Southeastern States at the instigation of the Houston interests to preserve the advantage they enjoy in the two-rate plan. The railroad competitive conditions in the southeast are not identical to those existing in the southwest. The marketing conditions are entirely dissimilar on account of the large consumption of cotton in the southwest. The Southeastern carriers generally provide for free back haul or out of line service to enable them to meet competitive conditions or for their own convenience. Generally, there is no marked difference in this respect in the two territories. Whatever difference there may be is accounted for in the fact that the competitive or marketing conditions are different in the two territories. The extent of the back haul or indirect haul service permitted free is not the same in connection with each commodity nor the same on a particular [fol. 734] commodity in connection with each line, because the competitive and marketing conditions differ. The extent of the free back hauling or indirect service accorded each commodity by each road is measured by its competitive influences which exist. Some of the roads in connection with some commodities provide a general provision in their tariffs to take care of any contingency in this regard. For example the Katy in its tariff 2266-C, I. C. C. No. C-6, Rice, provides,

"No charge for out of route movement will be assessed on any shipment which could have been handled by a competing line, point of origin to destination via transit station without additional service."

Nor does the Katy in this tariff restrict back haul or indirect service to the aforementioned condition: It also provides,

"Except as provided in paragraph (d) when out of line or back haul service is in excess of 125 miles, a charge of 1 cent per ton per mile will be made for such excess."

Somewhat similiar provisions are made in other tariffs. Reference has been made to free back haul permitted by the Santa Fe on cotton from Cleburne to Dallas and return. This free back haul service is accorded all other commodities accorded transit privileges that the witness knows anything about. It is to meet competitive conditions between the carriers. An example may be found in the competitive conditions at Ardmore with the Frisco. A shipment originating at Ardmore may be delivered either to the Santa Fe or Frisco for transportation to Houston; if delivered to the Frisco and transited at Dallas and there delivered a connecting line no back haul would be involved. The Santa Fe desires to meet this competition and accordingly waives back haul charge from Cleburne to Dallas and return. Otherwise it would be deprived of this competitive business. This is but a fair representative example of many other competitive conditions which exist throughout the southeast or in fact the entire country on not only cotton but grain and most all other commodities accorded transit privileges which necessitate the waiving of out of line on indirect haul service. It is my opinion that whatever additional back haul or indirect service may be ac-
[fol. 735] corded by the carriers in connection with concentration of cotton at interior points over and above that which is accorded other commodities is necessary on account of the peculiar conditions surrounding the transportation and marketing of cotton which do not exist in connection with the handling of other commodities. That is the only one of many factors which exist in the making of rates. To attempt to make every service remunerative in the transportation of freight, passengers, or in many other lines of endeavor would lead to a multiplicity of difficulties and bring chaos to the industrial life of the nation. There are so many different characters of service rendered in connection with transportation that it is wholly impractical to attempt to ferret out each service and determine either the cost or value of the service or what charge should be made for such service. It costs no more to handle a car of silk than a car of cotton piece goods. Theoretically it costs more to handle a passenger with baggage than one without, yet who would advocate the making of a separate charge for the 150 pounds

of baggage allowed each passenger, or making a lower charge for the passenger without baggage. It does not cost the same to deliver shipments to each industry in a given city. To adopt Mr. Clayton's theory would be as many rates to a given city as there are industries. Nearly every railroad would have a different rate varying with the varying costs incurred by each line. The shipper of a trainload of cattle would be entitled to a lower rate than the smaller shipper with only one car. The Farm Bureau would have to pay higher rates than the cotton merchants because of the nature of its business which requires the making of shipments in small lots. There is no added expense in concentrating cotton after making due allowance for the advantages which accrue to the carriers on account of interior concentration, especially where the cotton is concentrated where it is compressed. If there is any additional expense it would certainly be most difficult to determine what that expense would amount to in cents per 100 pounds. Even if the expense were definitely ascertainable it is my opinion it would be impracticable and unreasonable to make a separate charge therefore, because all cotton must be concentrated before marketing, and the fact that a facility located on the water front does not re-
[fol. 736] quire concentration in transit insofar as the rail service is concerned is no justification for the charge. Not all grain is transited and it would be just as practicable or reasonable for the shipper who did not by reason of the nature of his business require transit to insist he should enjoy a lower rate. The very purpose of establishing free concentration was to put everybody in the cotton business on an equality. The people for whom I am testifying favor the one-rate plan. Generally distance is one of the most important factors which causes the carriers to recognize advantages of location. I do not know of any freight rate adjustment anywhere in the United States where they recognize a difference in distance within the same switching limits. Usually the rate is made to apply to all points in the switching limits. The operating expenses either per gross ton mile or per net ton mile on the Gulf, Colorado & Santa Fe is materially below the average for the territory here involved, and while the exhibits submitted by Mr. Morrissey undoubtedly would reflect the approxi-

mate saving to the Santa Fe, it would not be representative at all of other lines, which would by reason of a higher operating expense per gross ton mile or per net ton mile, secure a greater saving in the compression of cotton. The statistics of the Gulf, Colorado and Santa Fe would not be at all representative for other lines and would not on any study of the Gulf, Colorado & Santa Fe reflect the full saving to the carriers of the compression in transit. I think that the gross ton mile figures would probably be the most accurate method which could be used to determine the saving on cotton. There is a considerable variance in the loading of cotton and other commodities. Lumber, for example, loads materially heavier, as would coal and wheat and there are incidental services in connection with the handling of cotton that might not be found in the other commodities. The two rate plan is a vehicle for defeating through interstate rates on cotton from Texas points to New England. For instance, from Texas common points to Fall River, Mass., the present through rate is the combination of the 83.5 cent coastwise rate to Houston or Galveston plus the water and rail rate of 62.5 cents beyond, a total of $1.46. It would be possible for a facility on the waterfront to which the 80 cent rate may apply to defeat [fol. 737] the through rate by shipping into that facility on the 80 cent rate and out on the interstate water and rail rate beyond.

Cross-examination:

I understand that the coastwise movement from Houston to New England is very small. I have been Traffic Manager of the Dallas Chamber of Commerce since January 1st, 1926 (R. 3601). Our organization has assumed the leadership in making the fight against the contention of the ports' interest in this case. It is my idea that this was an effort on the part of the Houston interests to monopolize the concentration and handling of cotton at Houston. I cannot say that it has been the idea of our members. I do not think it was so represented to the various interior smaller cities as being that kind of a scheme. A representative of our organization did visit a number of the points for which I am appearing here (R. 3602). I do not know what

representations were made by the representative of the Dallas Chamber of Commber calling on these individual bodies. Most of the smaller Chambers of Commerce are at compress points. There are a few exceptions, I believe. It is our position that every compress point should be built up as an important concentrating interior market, if there is enough cotton available tributary to that compress. I have not studied this case from the standpoint of cotton marketing (R. 3603). The rates to Dallas from St. Louis on commodities generally should be lower than the rates from St. Louis to San Antonio (R. 3606). There are factors other than the service. If we had the same rates today to somewhere 10 miles beyond San Antonio outbound, we might have a different condition. Competition is a factor. I would not say that any one factor should be controlling. I advocate making rates the same to all points in a switching district, or in an industrial community of a given city. That is almost universally the case (R. 3607). It is true that from Galveston to Norfolk, Virginia, at every port where cotton is exported, there are higher rates for ship-side delivery than for local delivery from some territories. There are exceptions from certain territories, but at New Orleans there is no such difference. On Exhibit A-132, [fol. 738] where the highest fluctuation was shown to be in 1925, I think that was due to the fact that there was an unusual drought in what is usually the producing cotton section (R. 3609). The fall in the price of cotton in the season of 1921-22, without a corresponding decrease in the cost of labor, undoubtedly did affect the production of cotton. In my section there was lots produced that was never picked (R. 3610). I know that there has been a substantial increase, both in the acreage and the production of cotton in the western part of Texas during the last four or five years. Whether or not that would build up the production in the state as a whole, would depend on what the conditions were in the other part of the state. I do not know whether or not it is true that but for this increased acreage recently in west Texas, the Texas production would have been far below a normal production. I think there were certain parts of east Texas that had a substantial increase in production (R. 3611). I believe, however, that increased production in west Texas did bring up the production dur-

ing the last season, notwithstanding the decreased production in the drought area. For cotton produced in the center of Georgia, there would be a market in almost any direction at the mills. Over here that situation does not exist, and the movement of cotton is largely in one direction (R. 3612). I think generally that the Liverpool and foreign markets make the basis for the marketing of Texas cotton. In my judgment, the price fixed at the interior Texas points is dependent largely on the price at the Texas Ports, because of the fact that the Texas crop moves almost altogether to the ports. I don't know anything about the marketing of cotton. I am not familiar with what goes into the making of those prices. The World War breaking out in 1914 demoralized the market, and there was a "Buy a Bale" movement started (R. 3613). I think that the fact that an additional port was established in Texas about 1920, which was already a large flat cotton market, would [fol. 739] naturally have some effect in the trading market. I could not say whether a strong effort on the part of local merchants to build up a movement through that port would attract a substantial amount of concentration. But I think, on that theory, that if you would build another port, we would not have any concentration left at all (R. 3615). I believe that the Texas Compress Association requested the information for the entire period from all of the compresses that are represented on Exhibit A-136, as far back as 1913. Questionnaires were actually turned over to me filled out by each of these compresses. I understand that some of [fol. 740] them were not in operation during that entire period. Others reported that they were unable to furnish the division betwen transit and concentrated cotton. Some of them reported that they had no records of the amount of business handled during part of those years. We got the report of 110 compresses altogether, but we did not have that many for more than one year. I wanted to show the information as complete as it was possible with the returns made, and I wanted to show that the (R. 3616) condition was not very different by using 65 compresses in Texas for example, and using 10 compresses for the year 1924-25 as an example. I do not think that all of the compresses for whom I am appearing, as shown on Exhibit A-131, furnished answers to the questionnaires; substanti-

ally, I should say the greater part of them did. I do not recall whether the cases where the amount of concentration of cotton has substantially increased during the last period of years shown on Exhibit A-138 had been reported (R. 3617). On page 3 of Exhibit A-139, there is one asterisk, "No separation between transit and concentrated cotton," and two asterisks includes railroad transit cotton. There were two points, Hillsboro and Marlin, which should not have been included in the totals, but they would not materially affect the results (R. 3619.) On Exhibit #A-145, the statement is based on the number of days open for business: I could not say whether they had their crew ready to start compressing any minute of all that time, on any one of those days. I did not send out the questionnaires; I do not know just what it does mean. I do not know whether or not the St. Augustine Compress operated on Sunday or held themselves out to compress cotton on Sunday. I simply took their statement for it (R. 3620). The fact that that compress and the compress at Greenville are shown to be open every day of the three year period, does not indicate to my mind that this might have been made up under a misapprehension as to what we were trying to get at. The questionnaire called for the number of days open for business. I take it that they were in fact open for business all those days. A man may be open for business and not do any business. I do not know what the conditions were on each of those days. The fact that the Arkansas presses had exactly 939 days with the exception of two that had 936, [fol. 741] it is not intended by this to indicate that the compress operation for the days are shown. The statement does not so indicate (R. 3621). The heading is incorrect; it should read "Number of days open for business." I went into the Transit Tariffs of the southeastern carriers. I did not go into the question of whether or not in their tariffs they generally allow compression of cotton in transit at as low a figure as they will ship it flat in transit. I did not go into the question of the transit privileges. I do know that they make a charge for concentration after a period which I believe is 90 days (R. 3622). That practice is not uniform. In some cases there is a storage charge, and in some cases a concentration charge, so far as I have had occasion to look into that question. My examination

was largely directed to back haul and indirect services without penalty.

There would not necessarily be any carrier competition that would compel the Santa Fe to take cotton from Krum, Texas, between Ft. Worth and Gainesville, to Dallas for concentration. It might be cross country competition. The Santa Fe wants to meet the competition from Gainesville, and the rate is the same from Gainesville as from Krum to Houston. As long as you permit cotton originating at Gainesville to come to Dallas for concentration, you must permit cotton from Krum to come to Dallas for concentration or you would be violating the Fourth Section as to inter-state traffic (R. 3624). The competition of the Katy makes competition at Gainesville. I do not know whether the Katy would be the rate making route from Gainesville to Houston, but the rate would apply via both lines. Perhaps via the Santa Fe the distance would be shorter. I would not say that all of the indirect service is either compelled by carrier competition Fourth Section requirements, or carriers' convenience as to compressing northward or southward. Some of it is brought about by marketing competition. The carriers frequently make rates to meet market competition. The Texas & Pacific, for example, equalize rates and made rates to New Orleans the same as to Galveston. That was undoubtedly a market competition; of course, it was also carrier competition.

[fol. 742] Redirect examination:

I have read the Texas Commission's Circular #401. I understand that it authorizes the application of the Texas Commission rate to the wharf of the wharf company. The domestic rate, as authorized by the Texas Commission, will apply to a point where shipside delivery may be effected (R. 3633). It is reasonable to assume that additional ports will compete with the existing ports. The traffic they might draw would reasonably be expected to come from existing ports' traffic rather than from interior facilities (R. 3634).

WITNESS E. H. THORNTON

I am Traffic Manager of the Galveston Chamber of Commerce, Galveston Cotton Exchange and Board of Trade.

Have held that position since March 1st, 1919. Galveston favors the one-rate plan, as we feel that this system of making rates will more nearly place all cotton merchants and concentrators on an equal basis. We want no charge made for the assembling or storing of cotton at the ports which has been previously concentrated in the interior before reaching the ports. The waiving of any charge for such storing at the ports, for that class of cotton would be confined, of course, to such cotton as is delivered to the Steamship Line or to the vessel at the port at which the storage take place. On such cotton which is purchased by the port merchant at these interior concentrating centers, the same is handled on ships in large units ordinarily, and the cotton moves to the ports under one bill of lading. It is my opinion that there is very little, if any, handling of this class of cotton at the mixed platforms at the port so that the expense to the carriers in the granting of this privilege of storing at the ports for delivery to the steamship lines is in my opinion not so great. The Transit Tariffs of the various carriers provide that wheat may be stopped for storage without charge; that wheat may be ground into flour and the flour shipped on to a farther storage point and there given a storage privilege, then reshipped to an ultimate destination. These free privileges [fol. 743] are granted on wheat and flour at three different points by most of the southwestern carriers, except that the storage of transit flour in Texas is not permitted, with the possible exception of one or two points in Texas, such as Marshall (R. 3636), but at other points in the southwest the storage of flour is permitted by the carrier without charge. The purpose of comparing the privilege in transit on other commodities is to show that it is not uncommon for the carrier to grant a second free concentration. My testimony is supplemental to that of I. M. Griffin. We are opposed to the carriers or Commission making rates on cotton conditional upon whether or not more service is free or performed in any one case than in another. The rates on cototn should include free concentration, switching, etc. On other traffic, the rates are so made to include these other services and privileges. We are opposed to any charge being assessed for first concentration of the cotton either at the interior or at the

port. Such a charge would defeat the one-rate plan and place us back where we are today, about which we are complaining in this proceeding. So far as I can determine, there has been no changed condition in either Galveston or Houston in the handling of cotton since the original hearing of this case, except that at Houston at the present time, there is a uniform switching charge of $8.10 per car assessed for switching cotton from the various warehouses at Houston back of the water front to the ship's (R. 3638) berth, while at the former hearing an exhibit was introduced by witness Dalzell showing varying switching charges that were assessed. At Galveston, the railroads formerly absorbed only $3.15 per car of the switching charge assessed by the wharf company on local or domestic shipments arriving at Galveston. The wharf companies charge $4.05 per car for switching service. At the present time, the railroads absorb this entire amount of $4.05 per car. The Cotton Concentration Company has taken over the six high density compresses at Galveston that were formerly operated by J. H. W. Steele (R. 3639).

[fol. 744] My Exhibit A-152 consists of 24 pages, page 1 being a Supplement to Exhibit A-9 introduced by me at the former hearing, which brings up to date the net receipt of cotton at Galveston, Houston and Texas City, Texas, as well as the export coastwise and rail movements of cotton from these three ports to market for the seasons 1923-24, up to and including March 31st, 1926 (R. 3640). Fully [fol. 745] 50% or more of the coastwise movement of cotton from Galveston originates or is concentrated at Galveston. That, taken into account with the all-rail movement, from Galveston to the New England mills, should demonstrate that there are merchants in Galveston who deal in domestic cotton. There is a large movement from Galveston to New England and Southeastern mills and any charge that would — assessed for first concentration in the interior could not very well be kept out of the ports on that class of cotton. There would be a penalty assessed even on first concentration (R. 3641). There is a considerable movement of standard compressed cotton for export from Galveston. During the period August 1st, 1925, to and including April 1st, 1926, three Galveston concentrators and shippers who do not own high density compresses

exported from Galveston 62,637 bales of standard cotton and 57,987 bales of high density cotton, while two of these same shippers exported 57,037 bales of standard cotton, and only 7,932 of high density cotton during the same period. Thus indicating that there is a substantial movement of standard exported cotton from Galveston, which seems to be on the increase every year. Page 2 of this Exhibit shows the movement of round bales of cotton through Galveston and Houston for the cotton season, ending August 31st, 1921, up to and including March 31st, 1926 (R. 3642). The heading is incorrect in stating that the cotton is from only Texas and Oklahoma. The cotton is received from everywhere. We received close to 40,000 bales of Mississippi cotton at Galveston this year. I think there was a considerable movement to Houston from Mississippi, I do not know. At page 3 of this Exhibit is a reproduction of Tariff 7 (R. 3643), issued by the master stevedores and placed at all Texas ports. Item 9 refers to the trucking of cotton within 200 feet of the hatch of the ship. I have discussed this matter with the various steamship agents and operators at Galveston, and I find that this term "200 feet of the hatch" means via a direct line. If there is any lateral trucking involved which would increase the actual trucking distance more than 200 ft. no additional charge is assessed, at least against the shipper or exporter. I find also that the Steamship Clerk quite often does not even know in what ship the cotton will be loaded, let alone in what hold of the ship it will be loaded. Page 4 is a comparison of the switching charges assessed by the International & Great Northern at Houston and [fol. 746] absorbed by the connecting lines at Houston on cotton brought in to that point when delivered through the McFadden Warehouse located in the Congress Street Yard and (R. 3644) also when delivered to the Ship Channel Warehouse, including the Long Reach plant, owned and operated by Anderson, Clayton & Company. This shows that on cotton originating in Texas and consigned to McFadden's warehouse, the switching charge assessed by the International & Great Northern is $1.80 per car, or 2.8¢ per bale, based upon an average loading of 65 bales to the car. On a car of cotton coming into Houston from points in Texas consigned to the Ship Channel Warehouse,

such as Long Reach Plant, Alexander Sprunt's warehouse, the International & Great Northern assesses a switching charge of $8.10 per car or 12.5¢ per bale, based upon the average loading of 65 bales to the car, there is a difference in the case of McFadden's warehouse of 9.7¢ per bale on inbound shipments. If the cotton is given a concentration privilege at (R. 3645) both McFadden's warehouse and at the Ship Channel Plant, reshipped either to New England Mills or the southeast on the outbound movement, the International & Great Northern assesses a switching charge of $3.15 per car from McFadden's warehouse, which is equivalent of 4.8¢ per bale, while the I. & G. N. assesses a switching charge of $8.10 per car from Long Reach Warehouse and Alexander Sprunt's warehouse, or 12.5¢ per bale. The last full column on this Exhibit shows the total switching charges assessed by the I. & G. N. for the in and outbound movement both to and from McFadden's warehouse and put in the Ship Channel Warehouse, which shows that the total switching charge is $4.95 per car, or 7.6¢ per bale; while to and from the Ship Channel Warehouse, the total switching charge is $16.20 per car, or 25¢ per bale, a difference in that case in favor of McFadden's warehouse of 17.4¢ per bale, which the carriers equalize in their freight rate. Page 5 of this Exhibit is a statement showing the fluctuation in ocean rates in high density and standard compressed cotton from Galveston to Liverpool, from season 1911 up to date (R. 3646). The reduction in the differential in the ocean rate quoted by the steamship lines on high density and rates quoted on standard cotton to the various foreign markets, caused the reduction in the charge for high density compressing at Galves- [fol. 747] ton. The port compresses necessarily must fix that charge for high density within reason to make it attractive for the cotton exporters. There has been no change in the cost of delivering cotton from the warehouse to the ship's berth and it does not matter, of course, to the shipper whether the charge is quoted separately or whether the entire charge of compression and delivery is quoted as one lump sum (R. 3647). For the seasons 1916-17 the spread was $2.00 to $6.00 in the ocean rate, but the allowance was from 20 to 25 cents per 100 pounds. In the season 1917-18 the spread was between 15 and 20 cents. During

the period of scarcity of ocean tonnage as a result of the war, the ocean carriers would not accept standard cotton at all. They will now accept any amount. In fact, some steamship companies prefer it because the ships go out only partially loaded at the present time anyway. They will not accept flat cotton. They could give you a rate on flat cotton for April, some of them might do that (R. 3648). Pages 6 to 10 of this Exhibit reproduces the statement prepared for the former record by Mr. B. R. Swain, in which it is stated that the average detention of cotton moving under through export bills of lading as well as all export cotton consigned to Galveston for a period August to October, 1923, inclusive, showing that there is less average detention on cotton moving under a through export bill of lading than on all export cotton, which includes cotton moving on through export bill of lading as well as cotton sent to the port on what is known as a port export bill of lading. Page 11 shows the average detention of cars containing export cotton at Galveston for the periods shown on this Exhibit. It takes into account the detention of the cars from the time the same was received in the railroad yards at Galveston, and not from the time that the cars are placed for unloading. The previous pages 6 to 10 take into account only the time for which the cars were placed for unloading. The statement at the bottom of page 11 is a reproduction of item 175, published in A. C. Fonda's [fol. 748] Tariff, I. C. C. 175, in which the carriers require (R. 3649) the steamship lines at Galveston and other Texas ports to sign an average agreement assuming all demurrage that may accrue on cotton that moves through on export bill of lading. I find that whenever any demurrage accrues, and that is very seldom, on such cotton moving on through export bill of lading, such demurrage is paid for and assumed by the steamship agent and not by the [fol. 749] shipper or exporter. Similar free time is allowed on all other export traffic, and generally speaking the export rates on all other traffic are the same as domestic rates applied to the ports or lower than the domestic rates applied to the ports on such important commodities as grain and flour which move in large volumes through the Texas ports. On grain, there is an extra free time of 10 days allowed at the ports. On flour the extra free time

is the same as cotton moving to the ports on export bill of lading, that is, four days. Pages 12 to 13 of this exhibit merely support the comparison shown on page 11, and is an excerpt from the testimony introduced by Witness Swain in a hearing at Galveston, Docket 17709, as shown on page 12.

Mr. Fulbright: We object to testimony being offered here of a witness in an entirely different case, unless the witness be produced here for cross examination.

Mr. Cummins: I have the figures. I will put them in. I have the figures for both through export bill of lading cotton as well as port export bill of lading cotton.

Mr. Thornton: All right. If you are going to put them in, I will withdraw pages 11, 12 and 13, except item 1730 at the bottom of page 11. (R. 3655.)

Page 14 is simply an excerpt of Note 16, page 4, of J. H. Glenn's Port Cotton Tariff #15-A, I. C. C. #A-525. It shows how the lines serving New Orleans interpret the term "depot delivery" and the meaning "delivery to a warehouse," that do not effect a shipside delivery. Pages 15 and 16 show the rates on cotton compressed in transit with carriers' exceptions as well as short line distances via not more than three railroads from representative points in [fol. 750] Arkansas to Galveston, Texas, and New Orleans, Louisiana. The rates shown apply for domestic depot delivery. The shipside rates are uniformly 5¢ per 100 lbs. higher than the rates shown. The materially lower rates that have been established via rail and barge from Arkansas to New Orleans, since 1923, have seriously disturbed the relationship of rates on cotton from Arkansas to Galveston and New Orleans that were fixed by the Commission in I. C. C. Docket 11,965 (R. 3656). Page 18 is a map, showing that the only line that would be involved in the alleged Fourth Section difficulties would be the line of the Missouri Pacific adjacent to the Mississippi River running from Memphis, Tenn., to New Orleans via Alexandria and via Ferriday. The Missouri Pacific applies the same rail rates from Memphis, Tennessee, 76½¢, and Helena, Arkansas, 76½¢, to New Orleans via its Mississippi River route. These are the same rates as are applied from Memphis, Tennessee, and Helena, Arkansas, via Illinois Cen-

tral and Yazoo & Mississippi Valley to New Orleans, the Eastside line. The Missouri Pacific, in order to clear (R. 3657) the Fourth Section on this division of its line must hold the Memphis rate and the Helena rate of 76½¢ per 100 pounds as maximum at intermediate points. Away from this particular division of the Missouri Pacific, you will find that almost the entire state of Arkansas is [fol. 751] blanketed at an 87¢ rate to New Orleans so we have a lower the domestic rate here. The shipside rates are 5¢ higher than shown on this Exhibit. From points in Arkansas on the Missouri Pacific and Chicago, Rock Island & Pacific west of Little Rock, the rates grade up rapidly to 96½¢ at Ft. Smith. This only involves what is known as the Mississippi River division of the Missouri Pacific running from Memphis Tennessee, to New Orleans via Marianna, Atkansas, McGhee, Arkansas, Dermott, Ark., Montrose, Arkansas, and Kimball, Arkansas, then via Alexandria, Louisiana, and the Texas and Pacific to New Orleans, also includes the route from McGehee, Arkansas, to Ferriday, Louisiana, then Texas & Pacific Railway to New Orleans. The present rates on cotton from that territory to Galveston are from 5 cents per 100 pounds to as much as 20 cents per 100 pounds higher than the current rates to New Orleans. If the Missouri Pacific can show actual movement of free cotton from Memphis or Helena to New Orleans under the 76.5 cents domestic rates, then we suggest that the Commission grant the Missouri Pacific Fourth Section relief on the 76.5 cent domestic rate from Memphis and Helena to New Orleans, and permit that carrier to carry higher domestic rates from intermediate Arkansas and Louisiana points to New Orleans. We suggest for illustration, that the domestic rate on cotton from Marianna, and intermediate Arkansas points to New Orleans be made 79.5 cents, or an increase of 3 cents per 100 pounds over the current domestic rates from that territory; that that same rate be made to apply for export shipside delivery, and that the rate to Galveston from this same territory be made 84.5 cents per 100 pounds both domestic and export shipside delivery, with similar adjustment from other points on that branch of the Missouri Pacific.

Our second proposition is this, that if no actual movement of free cotton is shown to move via the Missouri Pa-

cific from Memphis, Tennessee, and Helena, Arkansas, to New Orleans for local delivery, then we suggest that the Missouri Pacific raise its Memphis-Helena-New Orleans domestic rate to at least 79.5 cents, and this would equal the suggested rates from intermediate Arkansas and Helena points to New Orleans.

[fol. 752] In this connection I call particular attention to the materially lower rates applying on cotton from both Memphis, Tennessee, and Helena, Arkansas, via barge line to New Orleans, which would seem to indicate in my opinion that if there is any free cotton to these points the barge line would get it at its rate of 11.5 cents per 100 pounds under the rates carried by the rail route. Besides, there are the routes of the Illinois Central and Yazoo & Mississippi Valley operating from these two points to New Orleans at the same rate, 76.5 cents.

My third proposal, if either proposal number 1 or proposal number 2 are not accepted by the Commission, then we are willing to let the Missouri Pacific increase the local rates on cotton from this particular section in Arkansas to Galveston and leave the present rates to New Orleans from this same section undisturbed because of the small amount of cotton involved from this branch of the Missouri Pacific which would move to Galveston, and the further fact that the rates to New Orleans via rail, as well as the rail and barge routes are today so much lower than the rates applying to Galveston that Galveston does not draw very much cotton from this particular branch of the Missouri Pacific. This would remove all Fourth Section difficulties.

Pages 19 and 20 of this exhibit is a statement showing the present local depot delivery rates on cotton compressed in transit at carriers' expense from representative points in Louisiana to Galveston, Texas, and New Orleans, Louisiana. The rates to shipside for export or coastwise movement beyond are 5 cents per 100 pounds higher than the rates shown here. The rates shown on page 19 apply from points in Louisiana where the Commission in Docket 11,965 and I. & S. 1858 said that the rates to Galveston should be 5 cents per 100 pounds higher than the rates published at New Orleans. The carriers, in many cases, however, published

differentials in favor of New Orleans much more than 5 cents from this section.

On pages 20 and 21 are representative points in the territory of Louisiana from which the Commission fixed equalization Galveston with New Orleans. It is shown we have the same rates from this territory. He took some of them [fol. 753] that are not equalized Galveston 5 cents higher.

Page 22 is a map of the state of Louisiana. The blue pencil figures are the local rates to New Orleans, while the black pencil figures are the local rates to Galveston. This exhibit 22 should be considered in connection with the map of Arkansas, exhibit 18, and further demonstrates the territory that would be involved in this alleged Fourth Section difficulty about which we were speaking when we discussed exhibit 18, and what I said in respect to the Arkansas situation will apply with equal force to the territory in Louisiana located on and east of the Missouri Pacific Railroad running from Kimball, Arkansas, to Alexandria, Louisiana. I think the tariffs were simply filed by the barge line which held concurrences of the rail carriers in Arkansas. There would be no meeting from Memphis of that rate by all rail line.

On page 23 is a comparative statement showing total terminal charges including switching, unloading and wharfage charges at these three ports, Galveston, Houston and New Orleans, which shows that at Galveston the total is less than at Houston, while at New Orleans the total charges are slightly less than at Galveston. There is no reason why they should take the difference in the wharfage charge than a difference in the switching charge; the switching at Houston is twice as great as at Galveston, much more than offsetting any difference in wharfage charges in one case or another. The switching at New Orleans is greater than at Galveston, which, of course, offsets the difference in the wharfage in New Orleans versus Galveston. The coastwise steamship lines operating out of Galveston absorb the wharfage charges. They have no wharfage charges assessed on cargoes moving via the Morgan Line or Mallory line. At New Orlans there is a wharfage charge of three-quarters of a cent per 100 pounds on coastwise cotton moving over the city dock.

At page 24 is a comparative statement showing separately the switching charges per car, as well as in cents per 100 pounds, the handling charges, the wharfage charges, as well as the total terminal charges, including switching, handling and wharfage at Houston and Galveston, Texas, [fol. 754] and New Orleans, Louisiana, on various representative commodities moving for export and import through those respective parts to and from shipside under equalized rates. The purpose of the last page is to show on other commodities there is no difference made in the shipside rates, because there is a different wharfage charge. I suggest that the carriers fix their shipside rates to Houston in the case of cotton moving from Texas and Oklahoma and to New Orleans in the case of cotton moving from Arkansas and Louisiana and then preserve the equalization in the shipside rates to Galveston, and then to have the present equalization between the southern ports on shipside rates. Wherever the line haul rates are equal today the shipside rates are equalized today. There is no difference in the shipside rates today from Texas common points to Houston and Galveston shipside, because of the fact at Houston there is 1 cent wharfage on cotton delivered by barge to the ship at Houston. From points in Oklahoma there is no difference in the shipside rates to Galveston, Houston and New Orleans, because of the fact that New Orleans happens to have three quarters of a cent wharfage and Houston and Galveston have 2 cents wharfage on cotton going over the dock. We want that equalization in the shipside rates continued, and likewise when you come to Louisiana and Arkansas, the rates to New Orleans to shipside should be fixed, and wherever the rates today are equalized on New Orleans, Galveston and Houston, continue that equalization. The present domestic rate Shreveport to all Texas ports is 80 cents. Under the one rate plan that makes the rate 83 cents all the way around. At New Orleans the railroads do not absorb the loading charge which is 6 cents a bale practically over 1 cent per 100 pounds, that added to the three-quarters of a cent will bring it up to practically 2 cents if they do not absorb today out of their domestic rates. At Houston and Galveston the railroads today do absorb the two cents unloading charges. That would bring it over 5 cents per bale. My exhibit A-153 is a statement showing

the size and dimensions of the various shipside warehouses owned and operated by the Galveston Wharf Company at Galveston, Texas. The steamship agents accept and receipt for cotton delivered in these shipside warehouses and I will state further that the Galveston Wharf Company un- [fol. 755] loads the cotton from the cars and delivers same to the steamship agents at these warehouses and the railroads allow the Galveston Wharf Company 5.5 cents per bale for performing this unloading service. This is authorized in A. C. Fonda's I. C. C. 175. The average width of pier 39, for illustration, warehouse pier 39, is 205 feet, to which should be added a 35 foot apron making an average width from the ship's hatch to the farthest wall in the warehouse 240 feet, which is approximately the same width as the Long Reach plant and Anderson Clayton Company shipside warehouse. It is wider at many places in the ship's berth from some places in the warehouse.

My Exhibit A-154 is a comparative statement showing the present domestic and export rates on cotton compressed in transit at carrier's expense from representative points in Texas, Oklahoma and Arkansas to Galveston, Texas, New Orleans, Louisiana and Savannah, Georgia. My exhibit A-155 is a statement showing present through joint rates on cotton compressed in transit from representative Louisiana station on the Vicksburg, Shreveport & Pacific, Chicago, Rock Island and Pacific, Louisiana & Northwestern and Louisiana & Alabama Railroads, to representative southeastern mill points; also the combination rates applying to and from New Orleans from and to the same points. I have also shown the rates, local rates, applying to and from New Orleans as well as the proportional rates applying beyond New Orleans on cotton originating west of the Mississippi River where no through rates are in effect. My exhibit A-156 is a statement of the cost of delivering cotton to the railroad cars from the compress and to the tracks at Galveston which is concentrated and handled in the Galveston Compress & Warehouse Company at Galveston, known as the Moody warehouse. This exhibit was prepared at my request by the Superintendent of that facility, and he was unable to come to Galveston, although I expected to have him testify at Houston. I do not know

whether or not it is operated entirely in the same manner as at Kempner's, as far as coming up and picking up the cotton at the same place is concerned. I do not know how close it can be delivered to the tracks. I am certain that they run the truck through the warehouse (R. 3674). There can be no possible chance of discrimination or preference [fol. 756] under the Galveston Wharf Company's Tariff I. C. C. 28. There will be no change in the opposition of that privilege under the one rate plan, because the shipper, in order to avail himself of that privilege, must pay at the outset the one shipside rate (R. 3675). Under the one rate plan there will be no 12¢ penalty upon cotton which today passes the compress on flat cotton received at the port for this reason: we will take a shipment of cotton orginating in a town in Texas from which the rate to Houston today is 65¢ per 100 pounds. Let us assume on that cotton that the receiver at Houston pays 65¢ per 100 pounds, plus the cost of compressing that cotton, plus the cost of getting that cotton delivered to ship's berth. We will say it is 3½c. The total transportation cost is 68½ cents. He does not declare it for export today, but just pays the 3½¢ switching and other transportation costs to get it to shipside. He treats that as two different shipments into Houston and out of the warehouse at Houston to the ship's berth. Assuming the one rate plan is finally adopted, and as a result the carriers are permitted to increase this domestic rate on flat bottom to Houston to 67 cents, we will say for the sake of argument. The receiver of that cotton at Houston from the same point will pay 67 cents. He will compress it at his own expense, as he does today, and he will deliver it to shipside, as he does today, at 3½ cents per 100 pounds additional, and he will not declare it for export, the same as he does not do today. There will be no 12¢ penalty assessed against that cotton. The only additional charge that will be assessed will be in the increased rate that will be permitted in order to bring about the one rate plan, assuming that it is either two or two and one-half or three cents per 100 lbs. I am assuming that the present rule applying to [fol. 757] flat cotton in Texas will be continued, that only the rates would be increased as a result of this one rate plan (R. 3677).

WITNESS J. K. MOORE RECALLED

After checking up the additions and making corrections on exhibit A-151, we find the average distance to be reduced from 58 to 57.4 miles. We found that the distance from El Paso on the Southern Pacific to the first compress point in line of transit to the port, is 619 miles, which resulted in materially increasing the average distance. Without that the average distance would be 55.5 miles. There is very little cotton produced in the intervening territory between El Paso and San Antonio; there is very little of anything produced in there.

Cross-examination:

The same compress point would appear on this exhibit as many times as it would be on the various lines that are treated in the exhibit. It covers all of the compress points in the territory affected, so far as we had a record of them. We had no record of Purcell, Oklahoma, being a compress point. I think it was at one time. We undertook to cover all of the railroads that serve any compress (R. 3680).

WITNESS E. H. THORNTON RECALLED

I desire to adopt the testimony of Witness I. M. Griffin, except that part relating to compress charges and compress services, with which I am not familiar. The Galveston Wharf Company, if the two-rate plan is continued in effect, has prepared to lease its shipside facilities, warehouses, etc., to cotton shippers and will erect suitable compress facilities adjoining, so as to enable those shippers who de- [fol. 758] sire to use the port of Galveston and the facilities at Galveston, to meet the competition of other shipside merchans located elsewhere (R. 3681). The Wharf Company officials feel rather reluctant to take this course, but if the two-rate plan is continued, the Wharf Company's policy will be to lease out these shipside piers and warehouses to cotton shippers at a nominal rental so as to place those cotton merchants who use the port of Galveston in position to compete with other shipside

merchants who are now getting an advantage in the rates on export and coastwise cotton shipments. That procedure would impair the value not only of the back of the water front compresses at Galveston and elsewhere, but also would seriously impair the interior facilities for concentrating cotton, because eventually if the two-rate plan is continued in effect all cotton is going to be concentrated at the ports, because of this advantage that there is under the two rate plan for the water concentrator. We are not seeking to gain the advantage of the interior concentrating points and we think that both the port and the interior concentrating merchants should be given an equal opportunity to compete with one another, but the wharf company officials have decided that if this two-rate plan is continued in effect they will lease the shipside facilities out to cotton shippers (R. 3682).

At New Orleans the charge paid for unloading cotton amounts to 6¢ per bale. That is a contract charge; it is not published in a tariff. The railroads at New Orleans, as I understand it, make a contract with a certain unloading contractor to unload this cotton at New Orleans. The unloading contractor makes a charge of 6¢ per bale. On the basis of 500 lbs. per bale that is equivalent to 1.2 cents per 100 pounds. That unloading charge at New Orleans is not absorbed out of the domestic rates applying on cot- [fol. 759] ton from the Southwest to New Orleans. Should we add to that figure of 1.2¢ per 100 pounds unloading the .75 (75 one-hundredths) cent per 100 lbs, wharfage at New Orleans, it brings the total terminal charges at New Orleans which are not absorbed today by the carriers out of their domestic rate, up to 1.95¢ or approximately 2¢ per 100 lbs. We request that the export shipside rate to all of those ports be made by adding a uniform figure of 2¢ per 100 pounds. At the Texas Ports the only charge that the carriers do not absorb is the item of wharfage, which amounts to 2¢ per 100 lbs. at Houston and Galveston. At the Texas ports the carriers absorb the unloading out of the domestic rate (R. 3683). The Galveston interests are not opposed to the penalty being assessed on flat cotton moving within Texas. It is the position of the Galveston interests that they want an adjustment of rates which will permit the cotton merchants to concentrate their cotton at

the ports; at the interior points or anywhere they may choose on exact equal terms, or an equal footing. It is our position that all cotton merchants should be permitted to compete one with the other on as near as (R. 3684) equal basis as possible, regardless of where they are located, whether at the waterside or at the ports or in the [fol. 760] interior. I do not recall stating in a letter to the Commission just after the hearing that we wanted an exception made if it passed the compresses at Houston going to Galveston (R. 3685). I do recall that I referred to cotton which originated at a point in Texas immediately adjacent to Houston, where there is no compress between that point and Houston. We felt that after the railroads had hauled the cotton from Palestine or south of Palestine on the I. & G. N. to Houston, 150 miles, if that cotton was destined to Galveston we thought it would be more economical for the railroad to haul it on through to Galveston, the final destination, without penalty, but we do not stake our case on that. We just made that suggestion to the Commission (R. 3686). I do not think that situation is the same as the man at Houston passing a compress 70 miles north of Houston. Where you are bringing in cotton from a point beyond Houston on a line that runs through Houston to Galveston, which cotton does originate between Houston and the next compress point beyond Houston, I believe the railroads themselves would bring that cotton on through and have it compressed at Galveston instead of switching it out of the train at Houston, because they have the option of pressing it at any compress en route between origin and destination (R. 3687). The shipper has the right in Texas today to direct that the cotton go through flat. We have no objection to depriving him of that right.

Cross-examination:

The Galveston Wharf Company could handle a substantial quantity of cotton with its facilities; we have more shipside facilities than they have at Houston. We have more warehouse facilities, taken as a whole. We could construct others adjacent to the compress piers (R. 3688). There was a movement on foot to construct a large warehouse adjoining pier #10 that would hold 100,000 bales of cotton if the two-rate plan is continued in effect. I

think their plans were to lease it to private cotton people so as to place them in a position to meet the competition of the waterside merchants located elsewhere. Aside from the wharf company's warehouse, the storage capacity of the cotton warehouses at Galveston is something over 1,000,000 [fol. 761] bales, when it is tiered. That would include the Cotton Concentration Company Warehouse on the Wharf Company's property, but it would not include what we call the shipside piers that are ordinarily used for general import and export cargo. I do not know how many cars per day we can handle in the terminals at Galveston, and unload at the warehouses. I have never made any investigation of that. We advised the Galveston Wharf Company that we felt this two rate plan would not stand up because it was not right; and we did not want to see the Wharf Company lease out its shipside facilities until after the Interstate Commerce Commission had finally decided that the two rate plan should be continued in effect. We decided that the two rate plan was wrong back in 1923 when we saw that certain interests at Houston were attempting to build facilities at waterside to take advantage of the lower domestic rate to the disadvantage of other cotton merchants. I understand that the Cotton Concentration Company operates cotton warehouses on the premises of the Galveston Wharf Company (R. 3690). They have several warehouses. Since 1923, the Cotton Concentration Company has built a long shed immediately back of piers 39 and 40, but not at shipside. The warehause used of concentrated cotton. There are a number of railroad tracks intervening between this new shed and the shipside facilities. There is a shipside compress on pier #10. The Cotton Concentration Company has also constructed what you might term an Office Building and a Receiving Shed immediately back of piers #37, 38, 39 and 40, which has heretofore been used by the Oklahoma Cotton Growers' Association. There are high density compresses between piers 39 and 40, but not at shipside. The warehouse used by the Cotton Concentration Company (R. 3691) for the storage of cotton back of pier 27 is separated from the shipside warehouse by several railroad tracks and the testimony of the Witness James, in this Record, shows that cotton from that facility is delivered to the steamship by drays.

I is impracticable to handtruck cotton to the adjoining pier and if there is a concentrating plant operated by the Cotton Concentration Company at Galveston, from which cotton is handtrucked and delivered to the Steamship Agent, on that cotton we say that the shippers are not entitled to any refund whatsoever for that handtrucking, or so-called plant service (R. 3692). I am speaking for the Cotton [fol. 762] Concentration Company in that instance. They are members of the Chamber of Commerce and the Cotton Exchange. George Sealy is President of the Cotton Concentration Company, and also President of the Galveston Wharf Company. He has discussed the matter with me, and I am expressing the conclusions reached by the officers of that Company, including Mr. Sealy. Some of our members handle cotton through the Concentration warehouses at Galveston and re-ship it to New England by water. (R. 3693). We have no shippers located at shipside in Galveston. The cotton is concentrated at what is known in this record as back of the water front warehouses and delivered to the coastwise steamship lines, the Southern Pacific steamship line and the Mallory Line, for re-shipment to New York and thence to the New England mills. That cotton is delivered to these steamship lines by dray or motor trucks to the same extent cotton is delivered to the trans-Atlantic steamers at Galveston. On cotton which comes into the warehouse flat at Galveston and is concentrated and compressed to standard density, I assume that the charge for compression is 60¢ per bale, the same as at Houston (R. 3694). I do not know whether or not that includes delivery to shipside. By constructing or leasing shipside facilities of the Galveston Wharf Company to cotton shippers who handle a sufficient volume of business to demand that the steamship agent brings his vessel to that particular facility those cotton shippers are getting aboard ship or would get aboard ship, at approximately 18 cents per bale less than other merchants not having a similar shipside location. The man back of the waterfront would either have to absorb that or go out of business or move to shipside. Mr. Kempner owns his own warehouse. He pays his own cost of getting to shipside, amounting to [fol. 763] about 20 cents a bale. He has to absorb the cost as compared with the waterside man at Houston except

on coastwise traffic. Up to the present time, the water-side concerns at Houston have not been able to persuade the vessels to come to their location and take the cotton, but as to export cotton, Mr. Kempner has to meet that competition from anybody who has that advantage over him at the present time. The Galveston Wharf Company controls the assignments of ships to berthing spaces at Galveston at the present time, but that arrangement could easily be changed (R. 3696). The President of the Wharf Company could change those rules whenever he wanted to; of course, with the consent of the steamship agent. At the present time they do not shift from one berth to another at Galveston for cargo. If they should lease the piers to the cotton shippers, the conditions would be changed. The cotton shippers would be the ones to negotiate with the steahship agent about coming to their berth and picking up 500 or 1000 bales of cotton. They would not attempt to lease the warehouse to cotton shippers and operate the pier or wharf themselves. They would lease the warehouse including the pier, to the cotton shippers (R. 3697). I suppose they could do anything they wanted to with the piers if they owned them. There has been no change in the situation as to the back of the water front warehouses at Galveston as contrasted with the situation when I testified previously in this proceeding. They are still paying the extra charge and getting to shipside as they were before. I do not think there has been any change in reference to the ones that did not have compresses in their warehouses. Most of them are delivering their cotton to shipside standard density. They are shipping the majority of their cotton standard density instead of high density. They do not handle much flat cotton. It takes up too much room in the warehouse and is more expensive to handle (R. 3698). [fol. 764] There is some flat cotton moved into Galveston; I do not know how much. We do not regard it as undesirable traffic to the Galveston Cotton market. Merchants tell me that the majority of the flat cotton handled at Galveston is what is known as factors' cotton. We have, we believe, one of the largest cotton factors in the state at Galveston, W. L. Moody Company, who do strictly a factorage business. That Company handles a very large amount of factors' cotton. They tell me something around

100,000 bales a year. They do not buy or sell cotton (R. 3699). Kempner does both kinds of business, factorage and merchants' business, but his factorage business is very small as compared with his other cotton business. In regard to the rules of the Stevedores' Union as to the movement of cotton 200 feet from the hatch, I am informed that they take an air-line from the ship's hatch under that rule. If there is additional lateral trucking involved in order to get back to the ship, the shipper is not concerned with it, and if the ship is called upon to pay any extra trucking, the shipper is not concerned with that. The switching rate of $1.80 shown in Exhibit A-152 is the switching rate promulgated by the Railroad Commission of Texas, applicable throughout the State of Texas. I am not in position to say what the cost is. I am simply showing the published charge and the absorptions made by the connecting carriers of the published switching sharge. The I. & G. N. do not assess this switching charge when it comes in on their own line. The Gulf Coast Lines would pay the I. & G. N., as I understand it, $1.80 per car for switching it to McFadden's warehouse. The same relative situation would exist at any up town warehouse to a more or less extent (R. 3702). Our Steamship Agents advise us that there has been a substantial decline in the movement of cotton through Galveston on through export bills of lading in the [fol. 765] past four years, that the movement has been on port export bills of lading, and the cotton people tell us that is because the foreign buyer prefers a ship's bill of lading for his cotton because he knows his cotton is on board that ship. I do not know whether or not shipments to British markets can be made on through bills of lading. On page 16 of the exhibit I show the rail and barge rate on cotton from points in Arkansas to New Orleans in order to show the advantages New Orleans has over Galveston in the matter of rail and barge routes and to contrast (R. 3703) that with New Orleans' protest about no change in the relationship of the rail rates Galveston versus New Orleans from Arkansas. I have protested to the carriers against the advantage that New Orleans has in the rail and barge adjustment, without any result. Others have also protested including the Houston people. I do not think the one-rate plan would destroy port competition. If the

port markets were destroyed, that would be just as disastrous as if the interior markets were destroyed. I think we need both, but I take the position that the one-rate plan would not destroy the port market (R. 3704). I do not recall having ever advocated to the railroads, or in any way, the imposition of a charge for the interior concentration privilege on cotton. I know of no reason why the port concentrators and the port merchants can not survive on an equal opportunity with the interior (R. 3705). During the railroad administration there was a question raised as to the charge for second concentration at interior points, and at that time I advocated such a charge. It is our idea that by leasing the wharf facilities at Galveston to private interests, under the two-rate plan, it would not only protect the port, but it would protect those cotton shippers who use Galveston as a concentrating point in meeting the competition of other merchants who have shipside location and who are now getting cotton to the ship on a domestic rate. [fol. 766] I think the cotton shipper himself should operate the facility in order to get the shipside advantages, but I would not say in all cases (R. 3706). I do not think that the back from the waterfront concentrator who high densities cotton is not at any disadvantage as against the shipside man. He is in fact paying 57¢ for compression and 18¢ to get to shipside though it is quoted in one lump sum for convenience. When a shipper has cotton high densitied at Galveston and does not want it delivered to shipside, he could have it high densitied for 57¢ per bale if he would take possession of it at the compress. The compresses will do that (R. 3707). Before 1923, they made a certain charge for high densitying cotton and whether they quoted it separately from the shipside delivery charge or in one lump sum concerned only the shipper. I could not say just what the charge for high density compression at Galveston was before the 1923 season (R. 3708). I believe at the time of the last hearing in 1923, that the combined charge for compression and delivery to shipside was 72½¢ per bale. They have raised that to 75¢ per bale, which gave them 5/10¢ increase on their charge for compression. The charge for delivery to shipside has remained constant. They have never absorbed the cost of delivery to shipside. They have always charged for it. The

compresses at Galveston do not operate dray lines of their own. They pay the dray 18¢ per bale to take that cotton to shipside. What they are really doing is charging 57¢ per bale for compressing the cotton and for convenience they are paying 18¢ for the shipper to deliver that cotton to shipside and collecting it back from the shipper. If the one rate plan goes into effect, there will be no change in the charge at Galveston. I could not say about Houston (R. 3709).

[fol. 767] At the present time, there is no cotton hand-trucked to the ship at Galveston. It is all handled by motor truck or by drays (R. 3716). It was impractical to deliver the cotton to the ship. The ships at Galveston do not do a jitney service like they do at Houston. The ships berth at one berth and the exporter has to deliver all of his cotton to that ship at that berth. If you compress cotton at pier #10 and the ship is at #34, the ship will not come down to pier #10 for it. You will have to transport it from pier 34 to pier 10. To that extent, the situation has changed since the first hearing. There is no longer any cotton handled by hand truck from the high density compresses to the ship's berth. According to the information given by Mr. James, the superintendent of the Cotton Concentration Company, no Galveston facilities do that (R. 3717). Under the one rate plan, if there is any cotton trucked from the storage to the ship or from the compress to the ship, it must be considered as plant service, and the owner of that cotton is not entitled to claim any refund from the railroad because of that plant service (R. 3718). It is a debatable question as to whether the rates were ever intended to include the cost of granting second concentration. The first time second concentration was ever established in Texas it was established in Houston to equalize the Houston merchant with the merchant at Galveston, because at that time Houston was not a port and Galveston enjoyed second concentration free in getting cotton to the vessel. They made a charge of about 3¢ per 100 lbs., which exactly represented the drayage cost at that time from the back of the water front warehouses at Galveston to shipside (R. 3719). Nothing was put in the line haul rate proper. You might say that we get 50 miles of rail service at a charge not exceeding the cost of drayage within the city limits of

[fol. 768] Galveston, but, of course, that was a second concentration privilege. It is a fact that the same steamships serve both Galveston and Houston. They make arrangements with companies owning the wharves at both ports but the custom of shifting is not the same at both ports. Possibly if we would bring pressure to bear upon the steamship agents we might change that custom, but we have not done it so far (R. 3720). It is my understanding that the Galveston Wharf Company acquired the stock of the Shipside Density Compress Company rather than purchasing the properties and that the Shipside Density Compress Company still operates its compresses, and they are not operated by the Galveston Wharf Company (R. 3721).

WITNESS H. B. CUMMINS:

I am Assistant Chairman of the Texas Louisiana Traffic Bureau, Dallas, Texas. I am representing and testifying in this case for all of the Texas Lines.

(Mr. Fulbright and Mr. Reed waived the qualifications of the witness.)

The one outstanding fact in these cases is that there is a serious dispute between cotton merchants. Originally it was the merchants back of the water front at Galveston versus the merchants on the water front at Houston, but the interior merchants intervened, so now the dispute is between Galveston and interior merchants and water front merchants at Houston on the other hand. There are also (R.3722) some back of the water front merchants at Houston who are on the side of Galveston and the interior. The goal sought by each of these three classes is to put a bale of cotton on board ship at the port, and each expects an adjustment of rates or an application of transit privileges that will permit him to do so, at no greater expense than is borne by the others. On the question of a one-rate plan [fol. 769] versus a two-rate plan, the sole interest of the carrier for whom I speak is the preservation of their revenue. The Texas Lines are taking a position of neutrality so long as the question is one-rate plan versus two-rate plan and no additional services are demanded of the carriers.

Prior to the advent of the waterfront concentrator, everybody, both concentrators and the railroads, was satisfied with the two-rate system (R. 3723). The two-rate plan was approved by the Commission in the Louisiana Cotton case in Docket 11965, because it effected a parity of cost as between the interior concentrator who used rail service up to shipside, and the port concentrator who used drays or similar service from his plant to shipside, and the difference between the local rate and the shipside rate was measured by the cost of handling from the port concentrator's plant to shipside. The very character of this adjustment demonstrates that it was founded on the concentration privilege. The concentration privilege accorded the interior concentrator was the basis for the port concentrator's demand that the rates be so adjusted as to permit him to ship cotton by rail into his plant and out of his plant to shipside at no greater cost in the aggregate than was paid by the interior concentrator (R. 3724). In this discussion, interior merchants will be referred to as interior concentrators; back of the water front merchants will be referred to as port concentrators; water front merchants will be referred to as water front concentrators. This plan worked satisfactorily until the water front concentrator arrived. When the water front concentrators arrived, the carriers were confronted with two accusations, namely: #1, by the port concentrator at Galveston; that he was unduly discriminated against because the water front concentrator was paying the same inbound rate that he paid and was getting his [fol. 770] cotton to ship without additional cost. #2, by the interior concentrator; that he was unduly discriminated against because the railroads charged him 3½¢ more to get his cotton to shipside than his competitor, the water front concentrator, was paying. As a solution of the dispute, the port concentrators at Galveston suggested that the carriers assess the shipside rate on all cotton delivered to the plant of the water front concentrator. As an alternative, Galveston urged that if the two-rate plan should be supplanted by a one-rate plan, the carriers be required to grant a free second concentration for the benefit of the port concentrator, to the end that he might go to the interior concentrating points, purchase first concentrated cotton, ship it to his plant at the port, remerchandise it and ulti-

mately get it aboard vessel at no greater transportation cost than would be borne under a one-rate plan by the interior concentrator on cotton accorded one concentration in the interior. The Commission's language on that point was that they did not think that request of Galveston was reasonable (R. 3725). The interior concentrators have never subscribed to the alternative proposition of the Galveston port concentrators.

The carriers certainly have vigorously opposed the granting of a second concentration free at any point on the following grounds (R. 3726):

First, because it contributes in no way to operating economy but on the contrary destroys such economies as are accomplished by first concentration at the interior compress points.

Second, because it is of benefit only to the merchant or concentrator using it.

Third, because one concentration affords ample opportunity for the assembling of round lots of even running grades and staples.

[fol. 771] The first concentration in the interior takes place at the points where compression is accomplished. Therefore, we have three elements of economy entering into the first concentration in the interior, namely:

(a) Increase in density of the bales, which permits heavier loading of cars.

(b) Assembling of the cotton into round lots, which also tends to increase the average carload (R. 3727).

(c) A decided reduction in the number of cars that must be handled at the mixed platforms at the ports. Witness Pecot's exhibit #104 shows that cars loaded at interior compress and concentrating points with strictly concentrated, compressed cotton, contain on an average of 72 bales, as compared on an average load of 63 bales on compressed in transit cotton that is not concentrated, and a general average load of 67 bales on all compressed cotton, concentrated and not concentrated. We have shown by the

same witness that of the straight carloads of the interior concentrated cotton only 10.5% have to be handled through the mixed platform at the ports, and that 43% of straight carloads of compressed in transit cotton have to be handled through the mixed platforms at the ports. It is up to the carriers to get the heaviest possible loading of compressed in transit cotton consistent with expeditious service and the minimum idleness of equipment, but the fact that we get a greater average load on the concentrated cotton than on the compressed in transit cotton, and the further fact that the concentrated cotton involves considerably less mixed platform handling in the ports, convinces us that interior concentration at the compress points is of benefit to the carriers. There could not, however, be any further contribution to economy in transportation by splitting (R. [fol. 772] 3728) the haul from the first compressing and concentrating points to the ship into two pieces. Actual number of bales of compressed cotton received by rail at interior compress points will show precisely how much cotton is compressed at one point and subsequently concen- [fol. 773] trated at another, and our investigation developed the fact that only 48,775 bales of compressed cotton were received by rail during the 1924-25 season by 76 interior compresses, out of a total of approximately 5,000,000 bales (R. 3729). Those 76 compresses were in Texas only. The port concentrator who demands a free second concentration at the port in the event a one rate plan is established overlooks two important facts: First, it is a waste of transportation to allow another stop with the attendant unloading, reloading and switching of cars between the interior points of compression and concentration and the ship. Second, he gets a free concentration simply because the interior concentrator has it, and not because of any economy in transportation contributed by the handling through his facilities at the port. When a car of cotton reaches the port, the full line haul service has been performed, and all the shifting around that may be accomplished within the confines of the destination rather increases than diminishes the cost to the carrier of handling the traffic (R. 3730). Whether or not the carriers revenue will be increased by a split between the present shipside and local delivery rates would depend in large measure upon the (R. 3730) amount

of cotton that such port concentrators would purchase from interior concentrators and actually handle through their plants. Nobody can foretell what this amount would be under a one rate plan, but if a disadvantage of 3½¢ per 100 lbs., such as the port concentrator alleges he is now suffering, is sufficient to enable the port concentrators' competitor to control the business, we may assume that the interior concentrator will ship all of his first concentrated cotton rather than sell a portion of it to the port concentrator. I admit that this is conjecture, but it is extremely important for the commission to do some guessing on the proposition, because this is the one uncertain and indefinite element to be reckoned with in calculating the effect of a one-rate plan on the carriers' revenue (R. 3731). A shipment of cotton that is accorded first concentration at Dallas, transported under first concentration at Galveston and delivery made to Mr. Kempner's plant back of the water front, is assessed the 80¢ rate per 100 lbs. and Mr. Kempner [fol. 774] receives 1¢ per 100 lbs. for unloading, leaving the carrier 79¢, and no further service to perform. If Mr. Kempner elects to have the carrier perform the further service under second concentration, the carrier first sets the rate up to 83½¢ the shipside rate and collects in addition a charge of 3½¢ for the second concentration privilege, the total charge paid by Mr. Kempner being 87¢. Of course, Mr. Kempner would not do that when he can dray the cotton to the ship for about 3½¢, and thereby make his total cost 82½¢. Under a one rate plan with only one free concentration, assuming the rate from Dallas to Galveston would be 83¢, Mr. Kempner would pay the 83¢ to the railroad and claim the refund of 1¢ for unloading, leaving the carrier 82¢ and no further service to perform. If his drayage cost him 3½¢, his total out-of-pocket cost would be 85½¢. If Mr. Kempner elects to have the carrier perform the service from his plant to the ship, he would pay the 83¢ rate, plus 3½¢ second concentration charge, making his total out-of-pocket 86½¢ (R. 3732). Thus, the carriers would get 87¢ today if they performed the service to shipside, but under a one rate plan they would get 86½¢. By not performing the service the carriers now get 79¢ net, the difference between 82½¢ and 3½¢, giving an advantage of 3½¢ over the interior man. But

under a one rate plan, they would get 82¢ if they do not perform the service. If a free second concentration is granted, and the one-rate is 83¢, the carrier, after paying a drayman 3½¢ to perform it will have left in his pocket 79½¢, or only 5/10¢ more than is now earned without the performance of the additional service. My Exhibit #A-157 is a picture in figures of this second concentration dilemma (R. 3733). We actually pay 20¢ for drayage, but I have used 3½¢ here because that is the difference in the rate and is the figure talked about in this proce-ding (R. 3734). I expect if we put in the two rate plan, the draymen will boost their charges and we will have to pay them or do it ourselves (R. 3735). There has never been a free second concentration privilege on inter-state traffic in this territory. The Galveston and Houston Lines did, however, sometime prior to the year 1917, establish a second concentration privilege at Houston, and Texas City on cotton re-shipped to steamships at Galveston at a charge of 3¢ per 100 pounds. The Texas Lines Tariff #29, A. C. [fol. 775] Fonda's I. C. C. #44, which took effect September 13th, 1917 and cancelled individual tariffs of several port lines, provided for the second concentration privilege at Houston and Texas City. The 3¢ charge represented the approximate cost of drayage from plants back of the water front at Galveston (R. 3736). Houston's interior inland concentrators got 50 miles of rail service for 3¢ per 100 pounds. Item 40 of Texas Lines Tariff #17-D, which bears A. C. Fonda's I. C. C. #135, does provide for a free second concentration at Houston, Beaumont, and Aransas Pass on Linters under the intra-state tariff of the Railroad Commission of Texas, and my explanation of this unimportant item is that it must have been overlooked during the Federal Control period. Originally the item applied on both cotton and linters, intra-state, hence I think the history of the item will throw some light on the proposition. Prior to August 12th, 1915 there was no such thing as a second concentration privilege on Texas intra-state traffic. Effective August 12th, 1915, Railroad Commission of Texas Circular #4811, established a free second concentration privilege at Houston, Beaumont, and Aransas Pass and at any port where the port was the destination. In other words, Houston, Beaumont and Aransas Pass concentrators who

received cotton or linters that had been previously concentrated in the interior were allowed a second free concentration, so that they could move such cotton to the deep water ports of Galveston, Port Arthur, and Port Aransas, and (R. 3737) escaped the payment of the full local rate to the port, also concentrators at the deep water port, who received cotton that had been concentrated in the interior were allowed a second free concentration so that they could move cotton from the local warehouse to water front plants at the expense of the railroads. Houston, Beaumont and Aransas Pass were not then deep water ports. At the time the free second concentration was established by the Texas Commission, the local rate from Houston to Galveston was 6¢ on compressed cotton. It was a depressed rate to meet water competition to Buffalo Bayou. Prior to the issuance of Railroad Commission of Texas' Commodity Tariff #1-G in September, 1914, the Texas common point cotton rates were on a mileage scale extending out to 160 [fol. 776] miles and reaching a maximum rate of 45¢, but the (R. 3738) rates to Galveston were constructed by adding a differential of 6¢ per 100 lbs. on compressed cotton to the mileage or maximum rate applying to Houston. This differential of 6¢ was the same as the depressed local rate applying from Houston to Galveston, so that as a practical matter a shipment of cotton concentrated in the interior, shipped to Houston, and later reshipped to Galveston under the local rate paid the same aggregate transportation rate as a shipment moved direct from the interior concentrating point to Galveston. Likewise cotton concentrated for the first time at Houston and reshipped to Galveston paid the same through rate as cotton concentrated at any other interior point. I believe also that the rate to port Arthur was made similarly over Beaumont and the rate to Port Aransas was made similarly over Aransas Pass. When the Railroad Commission of Texas abolished the hard and fast differential basis of rate making on cotton to Galveston and extended the mileage scale of rates out to 210 miles, where it reached a maximum of 51¢ in September, 1914, the result was that through rates based on the scale to Galveston, became lower than the combination of the scale rate to Houston and the local rate from Houston to Galveston except from a few nearby points. This re-arrange-

ment of the method of rate making to Galveston, (R. 3739) no doubt entered into the free second concentration proposition at Houston. At any rate, there was restored to Houston merchants and warehousemen a privilege that formerly existed as a result of the combination basis of rates to Galveston, and that arrangement and the mileage scale on basis of rates through Galveston reduced the cotton rate on hauls under 210 miles from Houston, on cotton moving to Galveston. There was an exception in the cases of a few short hauls — nearby points, where the combination continued to make the rate. During the Federal Control, the Dallas Cotton Exchange applied to the Dallas District Freight Traffic Committee for the establishment of a second concentration privilege at interior points. I find that that proposition was predicated on the fact that the ports had it, and the further fact that Houston and inland points, had it. The proposition was vigorously opposed by (R. 3740) Galveston, Houston, Texas City, and New Orleans. [fol. 777] The Galveston interests submitted data showing that the cost of transferring cotton by truck from warehouses to vessels at Galveston was approximately 5¢ per 100 pounds and this figure was accepted by the Dallas Committee as the measure of a second concentration charge, calculated to equalize interior and port concentrators. Application was made by the Dallas Committee to the Director General for a freight rate authority authorizing a uniform second concentration privilege at all points, and a uniform charge of 5¢ at all points, and as a result of this application the Director General issued Freight Rate Authority #12,662, corrected. Upon its receipt by the Dallas Committee, Secretary A. C. Fonda, filed an application with the Railroad Commission of Texas for similar authority covering non-Federal Lines, and this application was granted by the Railroad Commission of Texas Circular #5279. As a result, the intra-state tariff, Texas Lines tariff #17-B, A. C. Fonda's I. C. C. #71, was amended by establishing the second concentration privilege at the charge of 5¢ per 100 pounds, effective October 28th, 1919, as indicated by Item 247-B, Supplement 3, to the tariff mentioned (R. 3741). The inter-state tariff governing the concentration at Galveston, Houston and Texas City to-wit Texas Lines Tariff #29, A. C. Fonda's I. C. C. #44, was amended

for account of Federal Lines, effective October 18th, 1919, as indicated by Item 60-B, Supplement #9. Texas City was served only by the Texas City Terminal Company, a non-Federal Line, and in order to increase the transit charge from 3¢ to 5¢ on inter-state traffic at Texas City, permission under the amended 15th Section had to be granted by the Interstate Commerce Commission. Such permission was given by Fifteenth Section Order #2018, corrected, dated November 15th, 1919, and the charge for second concentration at Texas City on inter-state traffic was increased from 3¢ to 5¢ effective December 3rd, 1919, as shown in Item 60-D, Supplement #11 to A. C. Fonda's I. C. C. #44. My Exhibit A-158, consisting of 6 pages, reproduces Railroad Commission of Texas Circulars Nos. 4614, 4811, and 5279, and Rate Advice #4809, issued by the United States [fol. 778] Railroad Administration, Division of Traffic, Western Territory, Western Freight Traffic Committee, dated Chicago, Illinois, September 6, 1919 (R. 3742).

Under the Ex parte 76, and Docket 11,764, the charge for second concentration became 7¢ per 100 lbs., and, (R. 3743) the 10% reduction on July 1, 1922, reduced it to 6½¢. The charge remained 6½¢ until January 20, 1924, when it was reduced to 3½¢ on both State and inter-state traffic. Railroad Commission of Texas Circular #6079, dated December 28, 1923, approved the reduction from 6½¢ to 3½¢. Individual inter-state tariffs of some of the carriers published the reduction effective December 18, 1923, and various other dates, but most of them observed January 20, 1924 as the effective date. The 3.5 charge was predicated on the approximate cost of drayage at Galveston as was the 5 cent charge originally fixed. At the regular monthly conference of the carriers and shippers during the month of August 1923, where the subject was discussed, no objections were offered by either interior or port cotton people. The United States Railroad Administration Rate Advice #4809 does not specifically mention Linters in connection with the charge of 5¢, and Railroad Commission of Texas Circular #5279 makes a separation of the cotton and linters item. This explains why the original second concentration rule fixed by the Railroad Commission of Texas in Circular #4811 still stands in the tariff on linters only. I feel reasonably certain that the privilege on linters is not

used extensively, and I gravely doubt that second concentration is ever applied.

Exhibit A-36, showing the number of bales of cotton compressed in transit not concentrated, and the number of bales concentrated during the cotton season ending July 31, 1923, 1924, and 1925 at points on the principal Texas Lines, [fol. 779] represent 85.1% of the total mileage of the Texas Lines (R. 3745). The total Texas mileage, of course, includes the mileage of a number of large terminal companies, such as the Ft. Worth Belt, Galveston Wharf Company and others, and if I had eliminated all of the terminal companies from the total mileage, Exhibit A-36 would have represented considerably more than 85.1% of the total. My Exhibit A-159 was prepared to show more clearly the mile-[fol. 780] age and compress points represented by Exhibit A-36. After showing the total cotton handled by all lines, included in Exhibit A-36, I deducted the Oklahoma, Arkansas, and (R. 3746) Louisiana cotton in order to arrive at the number of bales of Texas Cotton. Of the Texas Crop, the Exhibit accounts for 1,693,734 bales in 1923; 2,185,370 bales in 1924, and 2,732,483 bales in 1925. These figures cover compressed in transit and concentrated shipped to all destinations. The figures shown in the composite statement on page 4 do not include city cotton, originating at compress points. That is shown in the statement of the several lines included in Exhibit A-36, but I did not include it in the composite statement. Exhibit A-160 is the Texas Midland Railroad's Exhibit covering compressed in transit and concentrated cotton. It is similar to those of the lines included in Exhibit A-36, and shows in addition the cotton that originated at compress points, which is defined as net cotton. All of this is Texas cotton. The total mileage of the Texas Midland Railroad, as shown in table 1, page 328, of the 1924 Annual Report of the Railroad Commission of Texas, is 159.67 miles (R. 3747). The amount paid to compresses by the carriers in Texas for compressing transit cotton has always been fixed by the Railroad Commission of Texas, or to state the matter otherwise the Railroad Commission has prescribed the rates and fixed the amount of the compression cost to be assumed by the carriers. Prior to the year 1918 for 20 years or more, the amount of the compression cost assumed by the carriers was 10 cents per 100 pounds until the increase was

made in 1918. During the year 1918 the Price Fixing Committee of the War Industries Board made an investigation of the charges made by the compresses for their service of compression and as a result of that investigation a charge of 15 cents per 100 pounds was fixed as a reasonable charge for the service. The witness offered in evidence his Exhibit A-161 which reproduces Rate Advice No. 961 of the United States Railroad Administration, Division of Traffic—Western Territory, Western Traffic Committee, dated Chicago, Illinois, December 3, 1918. He introduced his Exhibit A-162, reproducing Special Permission No. 47588 of the Interstate Commerce Commission dated December 12th, 1918. [fol. 781] Pursuant to the Railroad Administrations Freight Rate Authority No. 2935 the substance of which is reproduced in Exhibit A-161, and Authority No. 8 issued to A. C. Fonda under date of December 13, 1918 by the Railroad Commission of Texas, Texas Lines Tariff No. 17-A, A. C. Fonda's I. C. C. No. 54 was amended effective December 19, 1918 to provide an allowance of 15 cents for 100 pounds to compresses for their service of compressing cotton for the carriers. This amendment to the Texas Tariff was published in Item 220-A of Supplement No. 13. Authorities issued by the Texas Commission and the Interstate Commerce Commission's Special Permission No. 47588 were for the purpose of making the same allowance to compresses serving non-Federal Control Lines and had been granted compresses serving Federal Controlled lines by the Railroad Administration. The allowance of 15 cents per 100 pounds remained in effect until August 26, 1920 on which date it was increased 20 cents per 100 pounds by Railroad Commission of Texas Circular No. 5327 concurrently with the 33⅓ per cent advance in all freight rates. My Exhibit A-163 reproduces Railroad Commission of Texas Circular No. 5309 and 5327, the first two pages of which reproduce Circular No. 5309 showing the application of the carriers for an advance of 5 cents per 100 pounds in the Texas intra-state cotton rates that was predicated on the request of the interior compresses for an increased compression allowance. The application of the carriers to the Texas Commission shown on this exhibit No. A-163 came up for consideration on July 21, 1920, but the hearing was postponed to August 4, 1920 by Railroad Commission of Texas Circular No. 5314. There was then pending on the

Docket of the State Commission an application of the carriers for an increase of 35 per cent in all intra-state freight rates, corresponding with the general advance authorized by the Interstate Commerce Commission for Western Territory in Ex Parte 74. After the hearings on the carriers application, the Texas Commission, by Circular No. 5326 dated August 21, 1920 authorized an increase of 33⅓ per cent in all freight rates, and by Circular No. 5327 dated August 24, 1920 authorized the same percentage of increase in the compression allowance as made by the carriers. The [fol. 782] increased rates were published in Special Supplement No. 8 Texas Lines Tariff No. 17-B, I. C. C. No. 71, and the 20 cents compression allowance was published in Supplement No. 9 to the same tariff, effective August 26, 1920. The compression allowance remained 20 cents per 100 pounds until July 1, 1922 when it was reduced 10 per cent, concurrently with the reduction of 10% in the freight rates. Railroad Commission of Texas Circular No. 5575 dated June 19, 1922, fixed the compression allowance at 18 cents per 100 pounds effective July 1st, 1922 and publication of this allowance is made in Item 30-A, Supplement No. 11, to Texas Lines Tariff No. 17-C, R. C. T. No. 33, A. C. Fonda's I. C. C. No. 110. My Exhibit A-184, reproduces Railroad Commission of Texas Circular No. 5575. The Texas intra-state tariffs issued by the Railroad Commission of Texas, and the intra-state tariff publications issued by the Texas carriers pursuant thereto, have always shown the amount of the compression charge that is absorbed by the carrier, for the reason that the rates on cotton are so stated as will require the application of the absorption rule in determining the rate on a shipment to be compressed at the expense of the carrier. For example, the present Texas rate on cotton for 100 miles as stated in Item 405, page 29 of A. C. Fonda's I. C. C. 135 is 64.5 per 100 pounds, but in order to determine the rate that would be paid by the shipper and collected by the carrier on a shipment to be compressed at the expense of the carrier and transported 100 miles, the absorption rule, published in Item 30 series of the same tariff, must be applied. This rule now provides that when the rate is 74 cents or greater, the carrier shall assume the entire cost of compression, and when the rate is less than 74 cents but greater than 56 cents the carriers shall absorb the amount in which the rates ex-

ceeds 56¢. For this reason the carrier assumes 8½¢ per 100 lbs. of the compression charge and adds the remainder of the compression charge, to wit: 9.5¢ to the 64.5¢ rate and the result is 74¢ which is the rate paid by the shipper and collected by the carrier. All of the intra-state rates on cotton, including the cost of compression at the Texas Ports published in Texas Lines Tariff No. 17-B. A. C. Fonda's [fol. 783] I. C. C. No. 135 and previous issues, have been determined by the application of the compress absorption rule in the manner outlined, but in order to illustrate this intra-state compress absorption fully and its relation to the freight rate on cotton compressed at the carrier's expense, my Exhibit A-165 shows the present Texas scale of rates, the present compress absorption rule and the resultant rates on cotton, including the cost of compression. There is no authority for the carrier to charge a shipper more than 74.5 on a shipment transported 175 miles, for example. If the carrier should undertake to absorb less than 18¢ on such shipments, say 15¢, for illustration—the shipper would have to pay a total rate of 77.5 for his transportation and compression. On a shipment transported 160 miles the rule specifically requires the absorption of the amount in which the rate exceeds 56¢, and as the rate at 160 miles is 73¢ the minimum absorption if 17¢. The interstate rate tariff, that is the tariffs publishing export rates from Texas to Texas ports, have never specified the amount of the compression charge absorbed by the carriers. Specific rates, including the cost of compression, have been published and the rate tariffs made subject to the provisions of individual transit tariffs covering the absorption of compression charges by appropriate references as required by the rules of the Commission. These individual tariff publications were amended to reflect the advance in the compression charge in line with the United States Railroad Administrations' Freight Rate Authority No. 2935 and I. C. C. Special Permission No. 47588, in December 1918. When the inter-state and export rates were advanced 35% under Ex Parte 74 on August 26th, 1920, the carriers permitted their absorption of the compress charge to stand at 15 cents per 100 pounds in their individual tariffs for a short period. These individual tariffs were later amended, some on October 10th, 1920 and others on inter dates to increase the absorption to 20¢ in line with what the com-

presses were charging and what the Railroad Commission had prescribed on Texas intra-state traffic. During the p-riod that the compresses were charging 20¢ and the carriers absorbing 15 cents the shippers were required to pay [fol. 784] the difference, or 5¢ per 100 lbs. on interstate and export shipments, and this resulted in complaints from the Houston Cotton Exchange and Board of Trade, the Dallas Cotton Exchange and others. These complainants put their case before the Interstate Commerce Commission in Docket No. 14385, which was decided September 18, 1924 in favor of the complainants. My Exhibit A-166 reproducing the decision of the Interstate Commerce Commission in Docket No. 14385, 92, I. C. C., 220, which directed particular attention to the fact that the failure of the carriers to absorb the whole of the 20¢ compress charge for a short period subsequent to the 35% increase in rates was found to be unreasonable, and reparation awarded. When the 10% temporary reduction in rates on agricultural products was made permanent by the I. C. C. in Reduced Rates 1922, the Interstate and export rate tariffs were amended effective July 1, 1922, but the compress absorption rules published in the carriers individual tariffs were not amended to reflect a reduction of 10% in the absorption until July 15, 1922. The compresses having signified their willingness to reduce their charge to 18¢, and the carriers, through Agents Leland and Fonda, filed Sixth Section application with the I. C. C. seeking permission for the carriers to reduce their charge to 18¢, effective July 1st, 1922 on short notice. On June 29, 1922 the Commission issued Special Permission No. 59398 granting permission to reduce the compress absorption to 18¢ on 10 days notice, and the tariffs were amended accordingly, effective July 15, 1922. Pursuant to permission granted by the Railroad Commission of Texas during the hearing of the carrier's application for an increase of 35% in all freight rates in August 1920 the Houston Coton Exchange and Board of Trade filed its views concerning an increase in the charge for compressing cotton in writing. My Exhibit A-167 is a photostat copy of such written views made from the original in the Railroad Commission's public records. My Exhibit A-168 gives a complete history of the compression charge in Texas since June 24th, 1918 and the Texas Intrastate maximum rates, the intrastate rates out of which the full charge for compression

was and is absorbed by the carriers and the intra-state rate out of which no compression charge was and is absorbed. [fol. 785] Full tariff authority for all the changes is indicated on the Exhibit. The intra-state rate, fixed by the Railroad Commission of Texas on cotton from Texas points to Texas ports, fixes the maximum net rate that the carriers can collect on export and coastwise traffic. I mean that no matter what export rate the carriers undertake to establish and apply, the shippers can ship their cotton to ports take possession of it and move it to the ship at their expense if the cost to them by this method of handling is less than the spread or difference between export and domestic rates. The spread between export and domestic rates hereto fore maintained and now in effect has not resulted from any effort on the part of the carriers to make any less absorption of the compress charge on interstate shipments than on domestic shipments. If the carriers were to absorb less of the charge on export shipments than they absorb on domestic shipments, the result would simply be an increase in the spread between the domestic and export rate. So long as the intra-state rate limits the volume of the export rate there is no way for the carrier to absorb less of the compress charge on interstate shipments than they are required to absorb on shipments to the ports under domestic rates from Texas. The service of the compress in pressing transit cotton is the same on cotton moving under interstate rates as on cotton moving under domestic intra-state rate. It is a matter of general and common knowledge that the movement of cotton in the southwest is during the fall months when the traffic in general is heavier. Car loadings during the months of August, September, October, November and December greatly exceed the car loadings during the preceding months, and in order to illustrate this I prepared Exhibit A-169 showing the average weekly carloadings by months on a group of southwestern lines during the years 1924 and 1925. Cotton is not segregated—it is included in the miscellaneous. The object of the Exhibit is to indicate that the car loading during the cotton moving season is substantially heavier than during the other seasons of the year,—that is due to the fact that not only grain, but cottonseed products, and cotton are both moving approximately at the same time, and there is a heavier general movement of all traffic. The reason I did show cotton

[fol. 786] by itself, is that cotton is not segregated in the report in which he obtained the information. The figures shown on this exhibit do not include the loadings on the Southern Pacific Texas Lines, the Santa Fe Texas & Oklahoma Lines or the Rock Island Oklahoma & Texas Lines, for the reason that the figures covering these lines are included with the system figures in the reports of the American Railway Association covering the western district. My Exhibit A-170 show- the cars loaded by month during the years of 1924 and 1925 on the rails of the line serving Galveston and Houston. The increase over July during September, October and November 1924 were substantially greater than it was in 1925. There was a severe drought in some 50 odd counties in the central, west central and southern counties of Texas in 1925 and I believe this accounts for the fact that the actual carloadings in September, October and November 1925 were less than in 1924. The heavy movement of cotton is in September, October and November. Approximately 70% moves during these four months. The number of cars loaded on the Trinity & Brazos Valley Railway during the first four months of each year is materially increased by crude petroleum. Whether or not this is the case on other lines I cannot say for the reason that I did not have complete data from all the lines showing the details of loading by commodities. My Exhibit A-171 shows the trend of cotton production in Texas since the year of 1916. Pages 3 and 4 simply give in detail of production by countries during the years of 1916 to 1924 inclusive. Page 2 is a map of Texas showing the several countries and locations of compresses. The heavy blue line marks the boundaries of arbitrary group numbers 1, 2 and 3 which I have used to show the general trend of production. Page 1 shows the total production of the state during the years indicated. The number of bales produced in groups 1, 2 and 3 and the proportion of the total production produced in each group. On page 1, I have deducted from the state's total the aggregate production in unreported counties. I had to do that because the unreported counties are scattered throughout the three groups, and I had no way of knowing how many bales to credit each group. In Railroad Commission of Texas, Cause #2234 [fol. 787] I prepared or assisted in preparing, an exhibit which was introduced as E. H. Thornton's Exhibit #61,

showing the proportion of the Texas crop produced within various distances of Houston. By deducting the production in unreported counties and the production of counties not reported for each of the years 1919, 1920, 1921 and 1922, we arrived at the average yearly production of 3,045,207 bales. Of this average yearly production, we showed the proportions produced in various areas determined by distances from Houston as follows: Within 100 miles, 160,233 bales; within 210 miles and over 100 miles, 1,058,600; within 350 miles and over 210 miles, 1,223,159 bales; over 350 miles, 603,215 bales. All of the counties shown in group 2 on Exhibit A-171 are more than 350 miles from Houston. The years of 1923 and 1924 show a very substantial increase in production over the years 1919, 1920, 1921 and 1922. Group 2 does not include all of the countries that are more than 350 miles from Houston, but when this group alone produces more cotton than the average production of all counties more than 350 miles from Houston, during the years 1919, 1920, 1921 and 1922, I believe that the average haul of Texas cotton has lengthened materially in recent years. As the average haul increases with the increasing of the proportion of the crop produced in the northwestern, western and southwestern counties, it becomes desirable from the standpoint of the carriers that the compression and concentration be accomplished as near the point of production as possible. As shown by Exhibit A-171, pages two there are now 21 compresses in group 2. Abilene is the nearest to Houston, the short line distance being 379 miles as shown in Texas Lines Short Line Mileage Circular No. 1-E, A. C. Fonda's I. C. C. No. 143. My Exhibit A-172 shows the number of bales of Texas cotton concentrated at interior points and reshipped to Galveston and Houston under domestic bills of lading during the season August 1, 1924 to July 31, 1925 inclusive. The total rail receipts of [fol. 788] Texas cotton at Houston and Galveston during the 1924-25 season was 5,229,183 bales. This is arrived at by combining the Houston and Galveston receipts. The Galveston receipts include 457,380 bales of Texas cotton that were reshipped from Houston, and this amount deducted from 5,229,183 leaves 4,771,803 bales of Texas cotton actually delivered at both ports by rail during the 1924-25 season. The total bales of Texas cotton afforded first concentration in the interior and then delivered on domestic

rate to facilities of both port and waterfront concentrators at Galveston and Houston during the 1924-25 season, that is the 779,386 bales shown on Exhibit A-172 constitute 16.7 percent of the grand total bales of Texas cotton received at both ports during the same season. Of the 779,386 bales, 518,919 were delivered at plants back of the waterfront and 260,467 bales went to plants on the waterfront. The 518,919 bales is the amount of cotton on which the port concentrator thinks he is entitled to free second concentration. This 518,919 bales is 10.8% of the total rail receipts of Texas cotton at the ports of Galveston and Houston during the 1924-25 season. The amount of cotton received at Galveston previously concentrated does not include the cotton shipped out of Houston to Galveston. It is strictly cotton shipped out of interior points. In gathering this information we had to go to the concentration claims. It is cotton moved in by rail and out by rail on which concentration claims were filed, and which moved on the intra-state rate. This is the amount of cotton that the port concentrators say will be involved or will give the railroads an advance in revenue if we do not give them a free second concentration. It does not necessarily mean that we receive revenue from it, at the port for second concentration. We did not receive any revenue from this cotton at all—they drayed it, we did not make them any allowances. This 779,000 bales is only cotton which moved on intra-state rate and does not include cotton which was concentrated at the interior and moved on inter-state rates. There was approximately 4,000,000 bales of cotton moved to ports on intra-state rates. 518,919 went to plants back of the waterfront and 206,467 [fol. 789] bales went to the waterfront. The so called penalty of 12¢ per 100 lbs., for passing compresses as shown in Mr. Dalzell's Exhibit A-43, is an essential provision of the Interstate Tariffs, Southwestern Lines Tariff 80-G, F. A. Leland's I. C. C. 1776, and Texas-Louisiana Lines Tariff No. 50, A. C. Fonda's I. C. — No. 166, which publish the export rates from Oklahoma and Texas, respectively to the Texas ports, contain this provision and I believe that its purpose is sufficient to establish its reasonableness. The Interstate and Export rates on cotton compressed in transit at the expense of the carriers are published as Specific Rates and are defined as follows: "Rates on shipments in bales, any quantity, delivered at destination compressed,

but which were delivered to the carrier at point of origin in uncompressed bales." In the absence of some requirement respecting the point of compression the shipper could under the rate tariff force a carrier to haul the cotton to destination flat, and pay the cost of compression, or he could select any press he might desire for his compression, regardless of how many compresses were passed in order to get to the press selected, and force the carrier to pay for compression out of the rate. The rate tariffs are subject to individual tariffs of participating carriers, governing compression and concentration and other services and privileges, and these individual tariffs indicate clearly where compression may be accomplished at the expense of the carrier, but when the shipper elects to use a compress that is not authorized by the individual transit tariff the question arises as to what through rate should the carrier apply from origin to destination on a shipment compressed at an unauthorized press. In order to cure this apparent defect in the rate tarifi the provision set out in Mr. Dazell's Exhibit No. 43 was incorporated therein, so now we have specified rates based 12¢ per 100 lbs, over the rate that includes cost of compression on cotton which the shippers elect to run flat past compresses, and we do not absorb the cost of compression—that is if the shipper designates a compress—we do not absorb the compression. If he wants to run the cotton flat from Oklahoma to Houston and get it [fol. 790] compressed and let us transport it to Galveston, the effect of the rule is that he pays the flat cotton rate. There is no reason why we should absorb anything if he passed any other compress enroute. The carrier can compress it at the compress that best suits his convenience. Wherever a shipper wants to concentrate at a compress three or four compresses down the road from where he originates the cotton, he will have to pay the flat rate, and that is the reason the rule is put in there. If he wants that kind of service he can get it and pay for it—that is the purpost of that 12¢ rule—it established rate on flat cotton for people who want to handle their cotton that way. If we haul that cotton from Oklahoma to Houston we collect the flat rate and there is no reason why we should pay for the compression. If cotton moves from a point 150 miles

from the port and there is one compress 25 miles from the point of origin and another on 75 miles and another on 125 miles, and a man moves his cotton flat 75 miles, but ultimately ships in carloads under the concentration arrangement, unless the carrier has some specific provision authorizing the passing of a particular compress, he will pay a rate equivalent of the flat cotton rate, all the way through and he will pay for his own compression. On Texas Intra-state shipments there is no so-called 12¢ penalty, but the Railroad Commission of Texas recognizes the right of the carrier to select the point where compression is to be accomplished, and when a shipper elects to pass a compress, the carrier is not required to absorb the cost of compression. Under the rules of the Railroad Commission of Texas tariff, as published in Texas Lines Tariff No. 17-D, A. C. Fonda's R. T. C. No. 45, the shipper is required to give the carrier notice of his desire with respect to compression or through flat movement by inserting in the bill of lading the words "To be compressed," or "To go through flat," as the case may be, and if the shipper directs compression the rule is that the carrier shall have the cotton compressed at origin, in transit or at destination. In reality there is no such thing as a "Carriers privilege rate" on Texas Intra-state traffic in the sense that the carrier has the privilege of delivering the cotton either flat or compressed at destination, but the carrier does have [fol. 791] the privilege of selecting the press that will best suit his convenience in the daily handling of his business and will not be required to absorb the cost of compression when a shipper directs that his cotton be hauled flat past a press. The statement on the first sheet of Exhibit A-13 introduced at the former hearing by Mr. Dalzell is in error in that no actual movements of traffic are shown. Practically all, if not all, of the concentration tariffs permit the concentration of cotton at the first compress point in either direction from point of origin. This practice arises from the compression in transit arrangement—that is the carriers for their own convenience and operating economy permit compression at compress points in either direction from point of origin, and because the distances between compress points are comparatively short, the carriers permit concentration in either direction. Concentration in the in-

terior takes place at compress points. The practice of the carriers in permitting concentration at compress points in either direction from the point of origin tends to create sufficient competitive markets for the producer as to make it unnecessary for him to ship his cotton through one compress point to another in order to get the best possible price for his product. He always has two competitive markets in the interior in addition to the port market. Other examples of indirect service depicted by witness Dalzell's Exhibit A-13, such as the movement of cotton from Lampasas, Texas to Austin via Gulf-Colorado and Santa Fe to Milano, I-G. N. to Austin, thence I.-G. N. to Houston results from carrier competition. For illustration the Southern Pacific has a direct line from Lampasas to Houston and over its route Austin is a direct line from Lampasas to Houston, and over its route Austin is a direct line of transit. Austin has a compress and is in a good producing area—for this reason Austin is a market for cotton. The Gulf Colorado & Santa Fe in connection with the I-G. N. meets the competition of the Southern Pacific in permitting Lampasas cotton to concentrate at Austin. Santa Fe cotton originating at points in Texas and Oklahoma north of Cleburne, Texas, may concentrate at Dallas, likewise cotton originating at Weatherford, Texas on the Santa Fe may concentrate at Dallas when the [fol. 792] destination is Galveston or Houston. Dallas is in direct line of transit over the Frisco, Rock Island and Katy on traffic from Oklahoma City for example, also Dallas is in direct line of transit over the Katy on Gainesville cotton. Oklahoma City and Gainesville are important cotton markets, and the Santa Fe in order to be on a parity with the competitors hauls the traffic over its own rails to Dallas and there to Houston. Dallas would be in line of transit over a logical route from Weatherford to Houston viz, the Texas & Pacific, Houston & Texas Central, consequently the Santa Fe is justified in allowing Weatherford cotton to concentrate at Dallas when moving over its rails. In permitting Oklahoma City, Gainesville and Weatherford cotton to concentrate at Dallas when destined — Texas ports, the Santa Fe allows the same privileges on cotton originating at intermediate points on this line as far south as Cleburne. I could multiply these illus-

trations indefinitely, but I assume the Commission would not be interested in too much cumulative evidence. I introduce Exhibit A-173 showing the movement of cotton to the ports of Galveston and Houston by months during the season of 1921 and 1922, 1922-23, 1923-24, and 1924-25. The calculations at the bottom of the page show that during the fall months of September, October, November and December a little bit better than 70% of the cotton moved by rail into Houston, for three other seasons. For the first one it shows 56.47%. My Exhibit A-174 shows the number of bales of flat cotton transported by rail from Texas points to the Ports of Galveston and Houston during the seasons 1923-24 and 1924-25. The first figure shown opposite the figure 1—in parenthesis is the total receipts of flat cotton at the two ports during the seasons indicated. The figure opposite the figure 2 in parenthesis shows the number of flat bales that moved from or past compress points. The percentage of the total is indicated. In connection with figure 4 in parenthesis, I have segregated the cotton that moves from and past compresses, indicating the number of bales that moved from points under 160 miles, and then the total number of bales that moved from points more than 210 miles from the port. Opposite figure 5, I have shown the percentage of the cotton that moves from and past compress points that originated in maximum rate territory for distances over 210 miles from the port.

[fol. 793] My Exhibit #A-175 shows the number of bales of cotton originating at all points in Texas, uncompressed cotton, delivered at Houston by the Southern Pacific Lines during the seasons 1923-24 and 1924-25, and the number of such bales that moved from or past compress points. Page 10 shows the total of the cotton that moves from and past compresses, and also the total of flat cotton delivered by the Southern Pacific and the percentage that the latter is of the former. Page 11 shows the number of bales that originated at points 160 miles and less from Houston, over 160 miles and over 210 miles. 102,767 was the number of bales that moved from or past the compress. The first item on page 10 shows that from Van Alstyne during the season 1924-25, there were only two bales of cotton moved flat to Houston, Texas, each one delivered by the Southern Pacific (R. 3783). Exhibit A-176 gives the same information

covering Galveston for the Southern Pacific. Exhibit A-177 covers the Santa Fe to Houston. Exhibit A-178 covers Galveston for the Santa Fe (R. 3784). Exhibit #A-179 covers the International and Great Northern at Houston. Exhibit #A-180 covers the International & Great Northern at Galveston. Exhibit A-181 covers the Gulf Coast Line at Houston. Exhibit A-182 covers the Trinity & Brazos Valley, and this Exhibit covers the cotton that moves from and past compresses (R. 3785). Exhibit #A-183 covers the Trinity & Brazos Valley and shows the cotton that did not move from or past the compresses. It is necessary to have this in order to show the total handled by the Trinity & Brazos Valley because the Trinity & Brazos Valley did not show this total on Exhibit A-182. Exhibit A-184 covers the Katy at Houston. The Katy did not show the grand total of flat cotton delivered by its line. Exhibit A-185 covers the Katy at Galveston; this is the total of Katy flat deliveries at Galveston during that season (R. 3786). The purpose of this detailed information is to show where the flat cotton is coming from. It is coming from Amarillo, Lubbock and everywhere else, and the movement of flat cotton is increasing yearly. The length of the haul is also increasing.

Exhibits A-186, and A-187 show the detention of cars of [fol. 794] cotton moving under through bills of lading and cotton moving under port bills of lading for export at Galveston and Houston during the year 1924-25 (R. 3787). I could not say whether this is the detention after the cars were placed or the detention after the date of arrival until released. We asked the demurrage bureau to supply figures showing the detention of cotton (R. 3788). I will ascertain how the time was computed and supply it for the Record. Exhibit A-188 is a statement from the Vicksburg, Shreveport and Pacific Railway of cotton compressed in transit, not concentrated, and cotton concentrated on that railroad during the three seasons requested by the Commission. I am sure these statements, Exhibits A-186 and A-187, do not include the excess over the free time (R. 3789). There is 4 days free time for unloading cotton moving under a local bill of lading for export and 10 days on cotton moving under through export bill of lading.

Cross-examination:

I do not know whether cotton which is purchased by a port merchant from an interior concentrator is ordinarily purchased in large quantities (R. 3792). The second concentration on cotton at the port would benefit one interior market and hurt another. I disagree with Mr. Locke on that point and agree with Mr. Stone of Dallas. I do not know what caused the railroads to grant free transit privileges on flour without charge. We do not get any economy by transit on grain. I do not know why the railroads granted it. It adds to our cost, because it reduces the loading on grain in transit from 100,000 pounds of wheat in, to 40,000 pounds of flour out (R. 3795). In my judgment, there has been a substantial increase in the average weighted haul of (R. 3796) Texas cotton. It is not the position of the railroads in this case that there should be a [fol. 795] charge for first concentration of cotton at the ports. As long as the man in the interior gets one, I suppose we will have to give the man at the port one (R. 3797). Under Exhibit A-157, I assumed that the one rate would be 83¢. You would have to add wharfage to that. That would make it 85¢. If the car was concentrated at Dallas, the rate would be 83¢ to shipside with first concentration at Dallas, and if the first concentration took place at a back of the water front point at Houston and went to shipside, the rate would be the same. There would be one rate applicable through both facilities to the same objective (R. 3798). If the cotton went direct from Dallas to a ship-[fol. 796] side facility, the rate would be 83¢, but under the unloading allowance a man on the water front would get his 1¢ unloading (R. 3799). The 1¢ unloading allowance would apply on both inter-state and intra-state traffic on a local bill of lading. If we are going to have one rate to the ports, and if the one rate system contemplates the same scale to be applied as the concentration factors from one point in the state to another point, we should have the same scale throughout the state. That was one of the difficulties we encountered when we got the Commission's order, because Mr. West would (R. 3800) not agree that if we put in an 83¢ scale to the ports, we could put in an 83¢ scale to Dallas. On cotton originating at a point where the maximum rate would apply, the Dallas Merchant would pay

on the inbound movement 80¢ or 83¢, whatever the scale might be. When it moved out to the port, he would pay 83¢ from Dallas (R. 3801). That would be a total of $1.66. The same cotton originating at the same point destined to a back of the water front facility at the ports, would pay inbound to that facility 83¢; he would pay outbound to shipside 3½¢ or 4¢. He would pay the switching rate to shipside. He would have a total charge to shipside of 87½¢. Both of these men would finally claim and get both of the shipments reduced to 83¢ (R. 3802). That would be one rate for both facilities to shipside.

I do not know of any transportation reason for the charging of 83½¢ on one shipment and 80¢ on another, both of them originating at Dallas and carried by the same transportation line to the shipside facility of the Houston Compress Company on the Houston Ship Channel. Assuming the same condition, I would make the same answer as to the other shipside facilities at Houston, Alexander Sprunt & Son, and Weatherford Crump & Company (R. 3803). Under the two rate plan, the man at the port gets free second concentration, but the carrier does not perform any additional service. He gets it out of the adjustment of the rate. He gets it at whatever it costs him. The carrier delivers the car to the water front man; we are then through with it. In regard to the 34 bales of flat cotton moving from Abilene to Galveston during the season 1924-25, gen- [fol. 797] erally speaking I am sure that the number of bales would be handled in more than one car. In other words, it would be tendered to us in small lots of 1, 2, or 3 bales or more. We naturally undertake somewhere along the line to assemble those small lots. Taking the one bale at Blum, Texas, we would have to load it out on a merchandise car going to that station. I doubt that we would have anything else there to assemble it with in the way of cotton. It would be loaded in a merchandise car to some break bulk point (R. 3805). It would have to be re-handled there. It would probably go through that same process from one division to another. When it got to Houston, I fancy that if it went on through it would be handled over the mixed platform. Generally I would say that this flat cotton that is moved from these long haul stations in Texas would

have to be handled in cars with other merchandise from one division to another, and handled by the carriers at their break bulk point for merchandise cars. I believe that the application of a 12¢ penalty for moving flat cotton on a Texas intra-state rate would diminish the movement of flat cotton. It would not, however, increase our gross revenue, because the shippers would have their cotton compressed in transit (R. 3806). It has always been our position that there is economy in compression in transit, and I believe the establishment of a rate on flat cotton of 12¢ higher than compressed in transit cotton will result in the compression in transit of this flat cotton that is now moving. Considering the fact that bulk of the flat cotton is moving long distances, I would say that on all of the long distance cotton it would be to the advantage of the carrier to get it compressed in transit. I know that the carriers have given consideration to the question raised in regard to the inability of the Houston concentrators to switch cotton because of the lack of reciprocal switching arrangement at Houston. We have made a record that in the event the one-rate plan is established we will reinstate the reciprocal routing arrangement that was formerly carried from plants back of the (R. 3807) water front at Houston; I think the carriers had really to do that in self defense, and we are going to do it, and if they put in the one-rate plan we certainly want the Commission to fix a minimum on the number of bales that are to be loaded in a car (R. 3808). [fol. 798] In regard to the one bale of cotton at Blum in the year 1924, it would be possible that that bale might be loaded in a car with a lot of other cotton going in that same general direction, and at the first compress point, or a break-up point, be taken out and consolidated with other carload shipments, just as other less than carload shipments are made by the railroad. Rates on cotton were made to contemplate the movement of one bale or any number of bales under one bill of lading. I do not think that if cotton were a carload commodity we would have considerably lower rates. The cotton rate structure has been built up and the practices have prevailed for a number of years on those less than carload lots, to the compress point (R. 3809) and from there on out as carload traffic, as re-

sult of the effort of the carirers. We undertake to get the best carloading possible. When the compress does not load as many as 75 bales, and there is not other cotton available to load in the car, we take the (R. 3810) best loading we can get and send the car on. The statements handed to me by Counsel gotten out by the Western Weighing and Inspection Bureau, which purport to show the number of cars loaded to Houston and Galveston in the season of 1924-25 from various compress points, state that the average loading for all lines out of Waco for the 1924-25 season was 71.6 on a total of 1300 cars; for the season of 1923-24 for 1,095 cars the average was 74.7. The statement also shows that in the year 1924-25, there were 203 cars that had 50 bales and less. In the 1923-24 season there were 159 cars that had 50 bales and less (R. 3811). I do not know what kind of cotton it was. If we had a car with less than 50 bales, we hauled it out. The statement shows for Muskogee, where the average for the 1923-24 season was 60.4 bales and of the total number of cars shipped, 719,349 contained less than 50 bales per car. I do not know whether that was on [fol. 799] account of the cotton being merely compressed in transit instead of being concentrated. That might have been the tail end of the season and there was not any more cotton to be had. It might have been at the front end of the season, when they (R. 3812) had a light movement in August. If the Compress had the cotton, it can get as good loading in the car of transit cotton as it can in the car of concentrated cotton. It must have enough cotton to the same destination. They had a rule during the war in the tariff requiring 75 bales out of compress points. I think they lived up to it generally speaking. They cut it out, because they could not always get the 75 bales. I do not know of any effort made to have a change made in the compression allowance when that requirement was abolished (R. 3813). My statement that on the two carloads of cotton going to the Long Reach plant at Houston there would be no difference in the service related to the handling of cars into the plant, which is transportation. The operators of compresses at Galveston usually have their own dray lines under some other name. I could not say that any operator in Galveston owns a dray line. There are plenty of ways to do that (R. 3815).

In my statement that the man at the port taking a second concentration had a 3½¢ advantage over the interior concentrator under the two rate plan, I was comparing the man back of the water front reaching the ship with the interior man reaching the ship. The man in the interior would pay a total transportation rate of 87¢, and the man back of the water front at the port would pay inbound 80¢ and get back his unloading, which would leave him 79¢ and then he would hire a drayman to take his cotton to the ship at 3½¢, leaving him out of pocket 82½¢ at Galveston. A man [fol. 800] at the interior could handle it through an additional facility at Houston and Galveston, if he managed to get it to the shipside facility and defeat the export rate, like the rest of them. I think that every bale of cotton going to both ports, (R. 3816) ought to pay the export rate. It all goes for export except that which goes to the Southeast and New England. The interior man does not use second concentration very much in the interior in Texas. For that reason, the policing of the concentration at the interior is less expensive than at the ports. At the port we have to watch to see that the port merchant does not get two concentrations without paying for the second. We have to trace the cotton back to the interior (R. 3817) first concentrating point. If the interior man were following the practice of using two concentrations, we would have to do the same thing in the interior. Second concentration is very expensive to the railroad and never should have been established. The 48,000 bales of cotton that were concentrated at other than compress points was first concentration, after compression in transit (R. 3818). The man taking the export rate would have to pay for the second concentration 3½¢; and the man at the port avoids that under the two rate plan, but has to pay whatever it costs him to handle his cotton. The unloading allowance of 1¢ [fol. 801] was put in largely as a result of pressure brought to bear upon the railroads by both the ports and the interior people. The railroads have since discovered that they made a mistake in putting it in there, but I do not know what they will do about taking it out (R. 3819). The difference between the services performed on two shipments of cotton, one being 50 bales of cotton originating at

Sulphur Springs, compressed at Greenville, concentrated at a back of the waterfront plant at Houston, and delivered to the ship at Houston, and the other being 50 bales originating at Sulphur Springs, compressed and concentrated Greenville and re-shipped to a back of the water front plant at Houston, and thence to the ship at Houston, in the one case its being compressed and in the second its being compressed and concentrated, the additional service is two terminals, getting the car in and out of the plant back of the water front. The additional services performed at the port that are not performed in first concentration are due to the fact that delivery is taken at the 80¢ rate, the 1¢ is refunded for unloading and the shipper does the rest, whereas, under a one-rate plan, the railroad would do the rest and you would be getting the money. I do not concede that the service at the port would be the same in both cases. To whatever extent we can relieve the mixed platform we are that much better off, but I do not think the second concentration is necessary to relieve that (R. 3822). Comparing concentration at the port with second concentration at the port, in regard to the two shipments from Sulphur Springs in the previous question, there would not be any additional service if it moves over the identical same line. The actual haul in miles via the railroad is probably the same (R. 3825). When you concentrate at Greenville, however, you increase your loading, whereas, if you compress it in Houston you get a lighter load. Then, if you concentrate it again back of the water front, you are destroying whatever increase in loading you got as a result of the first concentration, because you are splitting the [fol. 802] haul from Greenville to the ship in two pieces. You do not gain anything by concentrating it at the port after you have performed the haul down there (R. 3826). The most recent effort to get a charge for first interior concentration was the case before the Railroad Commission of Texas in 1923, in case #2,234, when the Houston people and the Farm Bureau people undertook to have a system of rates established which in substance worked that out. In that case Mr. Thornton opposed charging for first interior concentration. Previously, in 1919, Mr. Thornton had filed an application with the Dallas District Freight

Committee, asking that a penalty of 15¢ per 100 pounds be established for first concentration of cotton in the interior (R. 3828). The occasion of that was the effort by Mr. West of Dallas to get a second concentration in the interior. Mr. Fulbright and Mr. Thornton strenuously objected to giving a second concentration. Mr. Thornton filed an application with the Dallas District Freight Traffic Committee on May 30, 1919. I read from a letter to Mr. J. B. Payne, Chairman of the Dallas District Freight Traffic Committee, Dallas, Texas, dated May 30, 1919:

"I am in receipt of a wire from Mr. Edward Chambers, dated May 29th, reading as follows: 'Your wire May 28th. Dallas Committee has been instructed to Docket for consideration the general question of providing for second concentration privilege on cotton in Texas.'

"Since this has the effect of re-opening Docket #709, I would ask that you consider at the same time my application for a reduction of 15¢ per 100 pounds on cotton handled direct to Galveston without concentration privileges in the interior, which was submitted to you on the 6th instant." (R. 3829).

I do not know whether that was ever pressed.

I know of no reason from a transportation standpoint why a compress can not load as much transit cotton as it [fol. 803] can concentrated cotton if they have the cotton to load to the same destination. On a through bill of lading, as well as a port bill of lading and marked for export, the carriers pay the wharfinger for unloading, but where we deliver the shipment to a man at a warehouse and stop it there in the car, I do not see why we should pay him anything for taking it out. We do, however. We are giving them carload performance and we never should have given it to them. If you are going to proceed on the less than carload theory, the railroads could deliver the cotton at the depot. Then you will have a two-rate plan. Assuming that the cotton would be handled in as a domestic shipment, we would be relieved of the necessity of providing the depot or a facility, by unloading it over their platform, but I do not know that Mr. Kempner or anybody else has built a warehouse for the convenience of the railroads. I think they have their own purposes. If we unload cotton at the

freighthouse and let every fellow come and get it, the back from the water front man would have two draying charges and the water front man one. The third class rate is either 70% or 75% of the first class rate under the Shreveport scale. (R. 3834). Package Cars will run about 10,000 pounds, I think. The minimum on Peddler Cars is 15,000 pounds. (R. 3835).

WITNESS J. A. BOWDEN

I am Transit Cotton Clerk for the Western Weighing & Inspection Bureau, Houston, Texas. My duties are checking the concentration claims. I have been in that occupation since April 1, 1922. In the season of 1924-25, 479,585 bales were handled on concentration claims at Houston. I arrived at the expense of handling those claims per bale [fol. 804] by taking the gross salaries paid and dividing it into the number of bales handled, and we find that we have an expense of handling per bale of 1.08¢. (R. 3836). We took into consideration just the salaries in the concentration department, myself and two assistants. They were exclusively occupied in handling cotton concentration claims and checking the records pertaining thereto and maintaining the records covering transit operations. This 1.08¢ per bale does not include anything besides the actual salaries of the men employed in that work. In addition to that, we have office rent and stenographer, messenger service and [fol. 805] stationery and the handling of claims outside of our immediate office where it is necessary to send them from one office to another for verification, such as sending claims from Houston to Dallas, Memphis, Ft. Worth, or any other office for further handling. If the one-rate plan is put into effect, in my opinion, in the event reciprocal routing (R. 3837) arrangements are restored we will handle claims on practically everything that is switched. In order to get the benefit of the one rate, a man will have to take concentration, in order to get his refund. Based on the 1924-25 figures, I think that claims would be filed on 906,000 bales moving in switching service. Not less than five, and possibly six, additional men would be required to handle those additional claims. I estimate that the additional cost of handling that 906,000 bales would be about 8/10¢. I arrive

at that estimate by dividing the expense that would be incurred into the number of bales. (R. 3838). I include in that probable expense the salaries of five men at 8,100 dollars per year for all five. I do not include any additional items for rent, stationery, supervision, stenographic help or expenses of that character. The District Manager seems to think that the Galveston situation should be handled with about four additional men at the same salaries. The average salary per man is about $135.00 per month each. (R. 3839).

Cross-examination:

I would not say that it is more costly to investigate concentration claims at the port than it is at the interior point. In the handling of concentration claims in the interior, we do not devote any man's time to that. It is handled in connection with the regular inspection work, by our force of travelling men in the course of their regular duties. We send these claims back into the interior by correspondence for verification of endorsements, and to be sure that the transaction was had and was a bona fide sale. At Houston, with the reciprocal routing arrangement, those claims come to our office and the tonnage application is checked. That [fol. 806] is to see that over drafts are not incurred (R. 3840) against each individual bill of lading, and we maintain a transit record to prevent those over drafts. Therefore, we have to check each claim. Where they did not have reciprocal routing that would be a different proposition, and it would not be so difficult. The Auditors of the individual lines handle the concentration feature, and that would be in addition to the service we perform (R. 3841). The fewer claims filed the faster we can handle them. It reduces the cost to handle one claim on one freight bill covering 100 bales rather than 10 freight bills covering 10 bales each.

Redirect examination:

It will not be necessary to get additional forces in the District Office, because all records are maintained in our local office.

Recross-examination:

On cotton going direct to shipside, not concentrated at Houston, there is no claim filed naturally (R. 3843).

WITNESS S. G. REED

My residence is Houston, Texas. I am Assistant Freight Traffic Manager of the Southern Pacific Lines in Texas. I have been in the Traffic Department of the Southern Pacific Lines some 25 or 30 years. I am familiar with the rates on cotton and the handling of cotton. If the one rate plan is established on traffic to the Texas Ports, assuming that such a plan requires an increase in the domestic rate, and a reduction in the shipside rate so as to preserve the carriers revenue, it is not possible to determine what rate is necessary by basing the calculation wholly on the number of bales delivered at the ports on local rates and the number delivered on the shipside rate. Some of the cotton delivered at the ports on (R. 3844) the local or domestic rate is reshipped all rail under concentration to other destinations to which the through rates from the origin of the cotton is [fol. 807] ultimately protected. Also the cotton which is delivered to the plants back of the water front, if it has not had a previous concentration in the interior, will have to be delivered to the ship at the carriers' expense. Therefore, an increase in the local rate on this cotton does not mean an increase in the carriers' revenue. In the third place, the cotton that is delivered to plants on the water front at the local rate, and which is sent to vessels docked at other plants on the water front would be entitled to the same first concentration privilege as is accorded the cotton moved from plants back of the water front. Therefore an increase in the local rate does not mean an increase in the carriers' revenues on this cotton. The matter of an allowance to water front concentration for moving their cotton from warehouse to shipside at adjacent wharves also enters into the calculation, because if an allowance is made it will diminish such increase in revenue as results from an increase in the local rate to water front plants on all cotton that is placed aboard vessels at adjacent wharves (R. 3845).

An increase in the local or domestic rate to the port would be productive of increased revenues on the cotton which is accorded first concentration in the interior and re-concentrated at the ports, if the port concentrators continued buying cotton from interior concentrators instead of buying at the country origin and shipping through under the compression in transit rules. The compression in transit arrangement, coupled with a free first concentration, affords the port merchants the same opportunity of getting a bale of cotton from the country origin point to ship at the same transportation cost as the interior merchant. I mean by port merchant the man back of the water front. A decrease in the inter-state shipside rate to the port would diminish the carriers' revenues on a substantial portion of the cotton. The character of shipments involved in this diminution of revenues would be: first, cotton moving on through export bills of lading; second, cotton moving under port bills of lading marked for export or coastwise; third, cotton moving under through coastwise bills of lading from [fol. 808] Texas (R. 3846). Texas cotton moving under through coastwise bills of lading would be affected by a reduction in the shipside rates to the ports, because of the fact that the through coastwise rates from Texas are built generally on combination over Houston, the 83½¢ scale being the factor to Houston.

In determining the effect of a one-rate plan on carriers' revenue, we had to determine:

First, the number of bales delivered to plants on the water front and back of the water front under the local or domestic rate.

Second, the number of bales moved under through export and coastwise bills of lading.

Third, the number of bales moved under port bills of lading marked for export or coastwise.

Fourth, the number of bales which had been accorded first concentration in the interior, and which were delivered at plants on and back of the water front under local rates.

Fifth, the number of bales received by plants on and back of water front under local rates, which were re-shipped all rail under concentration to other destinations (R. 3847).

We were not able to determine the total number of bales moved from one water front plant to another by drays or

barges at Houston on which the water front concentrator could claim the privilege of a first concentration. The carriers have no way of ascertaining the actual number of bales handled by drays, but they did obtain the actual number of bales handled by barges. We took the number of bales that are ultimately put aboard vessels, and applied the difference between the present rates and other rates, and from the results thus ascertained deduct the cost to the carrier of making delivery to ship after concentration.

My main statement will deal with Texas cotton only. I will treat the other separately (R. 3848). The rates on cotton to Houston for coastwise movement are the same as [fol. 809] the rates on cotton to Houston for export. The only difference between the export and coastwise rate is that there is no wharfage. The coastwise rates and the export rates are 83½¢. The wharfage is added to the rate for export, but not to the rate for coastwise. The Steamship Lines absorb that wharfage (R. 3849).

I am testifying for the carriers respondents in this case, serving the Texas Gulf Ports. I am testifying only as to the position of these carriers on the plan of rates to the ports and as to the rate necessary to preserve their revenues under a one-rate plan. The position of these carriers is one of neutrality on the question of rates to ports. They are contending only that their revenues be preserved if the one-rate plain is adopted (R. 3850). The carriers desire to assist the Commission in determining what rate, if a one-rate plain is to be prescribed, is the one that will preserve their revenues. They have made an exhaustive study of the Texas cotton to the Texas Gulf Ports for the season 1924-25. We decided on using the revenue per bale under the present plan, and under the one rate plan to make our comparison, instead of using the total gross revenue, feeling that it would be simpler and easier to compute, and because of the fact that the loss or gain per balé would be the same regardless of the point of origin, the difference between the domestic and export rates from Texas being in all cases, 3½¢. In comparing the expenses that we now have with the expenses that we would have under the one rate plan, the situation at Galveston was comparatively simple, as a large percentage of the cotton was handled

under through rates and the balance was handled by drays, and the rate is uniformly the same for practically all drayage at that place, namely 20¢ per bale (R. 3851). But at Houston, there are various methods of handling the cotton from both back of the water front and water front plants to ships, namely, by barge, by truck, and in cars. The movement by barge began in the season of 1923-24, and the rate charge was 14¢. In 1923-24, the rate was increased to 17¢, but in the season of 1924-25 only about 90,000 bales [fol. 810] were handled. This season, while the rate is the same, the movement has not increased materially if any, and it is not certain that the service will be continued or that the present rate will be maintained. The second and largest movement was in cars. In July, 1924, there was a special rate of $8.10 per car established by Houston carriers, applying on all traffic between points on the newly organized Ports Terminal Association, and the member lines in Houston. All of the Houston lines are members of the Port Terminal Railway Association. This was an experimental proposition, published to expire in one year. It has been continued from time to time, but still carries expiration date due August 31st, 1926. Carriers recently asked the Railroad Commission of Texas to call a hearing to consider extension of this rate or to prescribe a proper rate for the service. The rate is greatly below the actual cost of service (R. 3852), which is about $15.00 per car. The cotton shippers at Houston have used it very extensively, having handled over 900,000 bales during the season of 1924, 1925, and fully as much this season, but as above stated it was and is a temporary rate. The cotton shippers using this facility have, in order to reduce their cost of handling each bale, loaded the cars to their maximum capacity. Under a one-rate plan, where the carrier would have to assume the cost of getting the cotton to shipside without any additional cost to the owner, there would be no incentive to load cars under this rate to capacity. They could tender the carrier just one bale, and even if they loaded 50 bales, which they could do without topping, this would make the cost per bale about 30¢. There is an expense of about 10¢ per bale on the cotton that is topped. We were unable to determine the amount handled to shipside by dray, as part of it was handled by public draymen and part of it

by owners themselves. In some cases they had incomplete records, and in other cases they were unwilling to give the information. This movement in 1924-25 was not heavy, nor has it been substantial during (R. 3853) the present season, but this situation is likely to change. The City of Houston has just about completed the acquisition of the right-of-way for two boulevards from the main part of Houston to the ship channel district, one on each side of the Houston Ship Channel. The money is available for [fol. 811] paving of one of these boulevards, and the bond issue will be floated for the other. They will undoubtedly be completed before another cotton season begins. With these two roadways, the cost of draying from plants back of the water front in Houston proper, will be greatly reduced, and it is quite possible that it may be as low as 20¢ per bale. The peak movement of cotton occurs at a time when the other principal commodity handled by the Texas Lines moves most freely, namely, grain, and the carriers may find it desirable, in order to minimize the use of box cars for switching movement, to increase their drayage allowance even above 20¢, which is quite possible, because of the fact that actual cost of switching will approximate the cost of handling by drays. Therefore, we decided that to be entirely fair we should use at Houston, as a basis for the cost of getting cotton from back of the water front plants to shipside, and from one shipside plant to another shipside plant, the same figure that we used at Galveston, namely, 20¢. The study made by carriers is reflected in Exhibit A-189. This exhibit was prepared under my supervision and is correct in my opinion. The figures, except where indicated to the contrary, are based on the records of the carriers. Page 2, at the left, is a statement showing the number of bales of cotton consigned to or through the Texas Gulf Ports, segregated as to states of origin, and also showing the number of bales to Houston and Galveston separately. At the right on the same page, is shown the number of bales moved to shipside at Houston and Galveston, Texas separately from the various plants by the various methods of transportation, that is, by barge, drays, or in cars (R. 3855). This does not segregate fully movement as between water front plants and back of the water front plants, as it was impossible for the carriers

from their own or available records, to obtained the number of bales, handled in each and every method of transportation from and to each kind of plant; that is, water front or back of the water front. It does not, for instance, show the number of bales handled by dray at Houston from back of the water front plant to water front plants, or from one water front plant to another. An effort was made to obtain this information, but part of this handling was by [fol. 812] private drays and part by draymen. The movement by dray at Houston was very small owing to the great distance to shipside from the back of the water front plants, and the condition of the roads, and the present high cost of drayage, which amounted in many cases to as much as 50¢ per bale. The third and fourth pages of the Exhibit contain other basic data upon which computations on the succeeding pages are based as to the effect of specific rates on the revenues of the carriers. Page 3 contains this information as to Houston and page 4 as to Galveston. No figures are shown as to Beaumont, Orange, Port Arthur (R. 3856), Corpus Christi, Port Aransas, and Texas City, because there was no movement to any of these ports during the season of 1924-25 except to Texas City, and practically all of that was re-shipped to and exported from Galveston, and is included in the Galveston figures. As to both Houston and Galveston, the receipts by the plants at the water front are shown separately from the receipts of the plants back of the water front. This was done because of necessity of making two separate and distinct computations, the expense of getting cotton to shipside from water front plants, and the expense of getting to shipside from back of the water front plants.

Item 1, page 3, shows in paragraph a and b the number of bales of cotton of Texas origin delivered to plants back of the water front and at waterfront, respectively, on the intra-state rate. Paragraph C shows the total and paragraph D and E the percentages. Item #2, page 3, shows the number of bales of Texas cotton on through export bills of lading, and on through coastwise bills of lading. It will be observed that this amounted only to 58,925 bales, or 2.5% of the total Texas cotton crop delivered at Houston by rail (R. 2857). Item #3 shows, in Paragraph A, the grand total of Texas cotton delivered at Houston by rail,

and paragraph B shows the total of all states delivered at Houston by rail and in paragraph C of the percentage of the former to the latter, 85.6%. Item #4, paragraph A shows the number of bales of Texas cotton accorded first concentration at an interior point and delivered at the port on the [fol. 813] intra-state rate, 80.3¢ scale. These figures were obtained by an actual check of all concentration claims filed on Texas cotton moving during the season of 1924-25 which was concentrated at interior points and consigned to Houston under the intra-state rate. The figures under section A, in paragraph 4, are included in item #1-A. The bales having interior concentration are included in the first item. 1,223,783 is back of the water front. The total of both back of the water front and water front is 2,208,408 bales (R. 3858). The two items B and C are segregated as between the back of the water front and the water front. It was not possible, without tracing back each and every shipment in each and every claim, which would have been a tremendous task to determine exactly how much of such cotton was delivered to a water front or a back of water front plant. We have therefore divided this between the plants back of the water front and the plants on the water front on the same ratio as the total receipts from Texas origin as those two classes of facilities bear to each other, namely, 55.415% back of the water front and 44.585% at the water front, as shown in Item 1, paragraphs D and E. Item #5 shows the number of bales of cotton from all states re-shipped from Houston to the Southeast, Pacific (R. 3859) Coast, New Orleans and Galveston. It would be impossible to determine how many bales of these shipments originated in Texas owing to the substitution privileges accorded shippers under concentration rules, therefore, this proportion originating in Texas was arrived at by taking the percentages shown in Item 3-C, which was 85.6% of the total cotton arriving at Houston by rail, and this segregation appears in Item 5, paragraph B. The movement in Item 5 has been further segregated to show separately, first, the shipments from Houston to the Southeast, Pacific Coast and New Orleans, and, second, the re-shipment to Galveston. These are shown in Items 6-A and 7-A respectively. [fol. 814] It being necessary, in later computation, to segregate the Texas cotton included in these two items, this has

been shown in paragraph B of 6, and B of 7. It also being necessary to further segregate the respective movemments of Texas origin between water front and back of the water front these have been shown in Item 6-C and D and 7-C and D. Item #12 shows the total number of bales finally re-shipped or exported from Houston independently of the carrier. This was arrived at by deducting from the total number of bales of Texas cotton received at Houston, first, the number of bales concentrated at the interior, which [fol. 815] moved to Houston under the domestic rate; second, the number of bales re-shipped from (R. 3860) Houston inter-state by rail, and, third, the number of bales re-shipped to and via Galveston which gave us 674,165 bales handled by back of the water front facilities and 542,421 bales handled at water front facilities, which was shown in Item #12 and represents cotton which was finally exported or sent coastwise at Houston independently of the carriers. This is exclusive of cotton previously concentrated at the interior, which cotton was also re-shipped from Houston independently of the carriers, but is treated separately because the effect on the carriers revenue is taken into consideration on these two classes of cotton separately. The 674,165 bales shown on page 3 is the number of bales we contemplate we will have to deliver to shipside at Houston from the back of the water front (R. 3861). We have used that in our computations as to what the rate ought to be. That is in addition to the ones they are now delivering to shipside. We are only delivering 58,925 on through bills of lading now at Houston. Included in that 542,421 bales are 120,000 bales of Texas origin cotton that was actually moved from one water front plant to another water front plant in 1924.

[fol. 816] On page 4 of the exhibit is the same information with respect to Galveston, the only difference between the two is that it was necessary to take into consideration in the lower part of it the reshipment from Houston. We had to deduct the reshipment from Houston to Galveston from the total receipts of Texas cotton for the reason it was duplicated. The amount of Texas cotton moving through the port of Galveston on which the export or coastwise rate was paid was 1,069,965 bales, which is 35.7 per cent of the total Texas cotton delivered at Galveston by rail as com-

pared with 58,925 bales on which the export or coastwise rate was paid to Houston, representing 2.5 per cent of the total Texas cotton delivered at Houston by rail. The 534,323 bales of cotton reshipped from Houston to Galveston shown in Item 7 page 4 was deducted from the Houston figures in order to avoid duplication in the computation of revenue at the two ports; pages 5, 6 and 7 contain a computation of the various rates and allowances based upon the movements shown on pages 3 and 4 as showing the effect of each rate or rate basis on cotton from Texas origins to the Texas Gulf ports. They are necessarily based on the following assumptions:

First, that the amount of cotton handled by waterfront and back of water front plants at each port will be the same.

Second, that the amount of cotton concentrated at the interior will be the same.

Third, that the amount of concentration at the port for movement all rail will be the same.

Fourth, that the amount handled under concentration at the port for reshipment, coastwise or export, will be the same as was exported or coastwised independently of the carriers, and which had not been previously concentrated.

Fifth, that the movement under through bills of lading or bills of lading to the ports for export or coastwise movement will be the same.

Sixth, that the volume of movement by each of the vari- [fol. 817] ous means of transportation from the plants at these ports to shipside at the ports will be the same.

The figures in this exhibit are based on the application of the one rate plan to 1924-25 movement as it actually was divided between the ports and between the back of the waterfront plants and the waterfront plants at each port. Wherever in this exhibit the rates of 80, 82, 83, and 83.5 cents are mentioned they refer to the scale reaching the maximum at these figures. Some of the cotton involved in these proceedings originated at points taking lower rates and some at points taking higher rates, but all of it will be affected to the same extent in cents per 100 pounds and per bale if a one rate plan is adopted. For this reason the increase or decrease per 100 and per bale in revenue of the carriers as compared with the present rate will be the same.

The statements of the effect upon the carriers revenue under certain rates are confined to rates of 83, and 82.5 and 82 cents. This is not to be construed as an admission by the carriers that under certain circumstances which may develop an 83.5 cents rate may not be necessary to preserve their revenues.

Page 5 is a statement of the effect of an 83 cent rate. The cotton shown in item 1 is that which was left at Houston and Galveston after deducting from the total receipts of Texas cotton at domestic rates that which was reshipped from either Houston or Galveston by rail and the Texas cotton concentrated at the interior and delivered at the domestic rate. The number of bales shown in item 1, page 5 are taken from item 12, page 3, for Houston, and item 10, page 4, for Galveston. This cotton was delivered at 80 cents. An Allowance of one cent was made for unloading, leaving the carriers net revenue of 79 cents. Under the one rate plan, on an 83 cent basis, the carriers gain 4 cents per 100 pounds, or 20 cents per bale, as shown in columns B, E, H, and K, opposite item 1, page 5. But on a one rate plan [fol. 818] under the concentration rules of the carriers, this cotton will be taken to shipside at the expense of the carriers, who, however, by proper tariff provision, allow the owner to do so himself and reimburse him for the cost, not to exceed 20 cents per bale. It is assumed for the purpose of this computation that this will be the expense and the allowance on all cotton shown in columns B, E, H, and K, item 2, page 5.

The carriers will break even on this character of cotton on this allowance. Hence, as shown in item 3, columns C, F, I, and L, there is neither an increase or decrease in revenue. Shortly after the original order in Docket 14940 was issued, the carriers serving the Texas Gulf ports have given consideration to the question as to the proper allowance, if any, to make to waterfront concentrators for getting cotton accorded concentration at the port to adjacent docks, and first decided upon an allowance of 5 cents. This met with vigorous protest from shipside waterfront facilities, and the matter was further considered at a regular meeting of the Texas Tariff Bureau held in Dallas, Texas, on September 1, 1925, at which the following recommendations were adopted:

"That item 65, Texas Lines Tariff 29-C be amended to provide that on the shipments moving under the new interstate domestic rates an allowance will be made to cover the actual cost not to exceed 20 cents per standard bale, and 10 cents per pound bale, for the service of handling cotton and cotton linters from Galveston, Houston and Texas City to shipside. Subject to the note shown in item 65, the same allowance to be made at other Texas Gulf points, on request."

There was adopted at the same meeting following recommendations:

"That the lines serving the ports shall conduct an investigation at the earliest possible date, to determine the actual cost of performing that portion of service of trans- [fol. 819] portation which developed upon the carriers on cotton from the compress or warehouse to shipside and if necessary a public hearing on this subject to be called by the carriers." In the original order, the Interstate Commerce Commission did not state definitely whether the carriers were authorized or required to grant an allowance to waterfront plants to get cotton to adjacent docks. The petitioners for a reopening named in their petition this as one of the errors. While the Commission did not specifically refer to this in their order reopening the same, they did reopen it to consider what rates shall be established to preserve the carrier's revenues.

As indicating the importance of the issue whether any allowance shall be made to waterfront plants for getting cotton to adjacent docks, the difference between no allowance and 20 cents allowance is $100,356.20, and each 5 cent allowance affecting the carriers revenues to the extent of $25,089.25, on the cotton handled by the shipside facilities to adjacent docks. That computation is based on the amount of cotton handled to shipside as shown in this exhibit. The carriers ask that the Commission decide whether an allowance can lawfully and properly be made by the carriers, to the waterfront plants for getting cotton to shipside at adjacent docks, and if it is decided that such allowance can be made that the Commission determine what the amount or amounts of such allowances shall be in the proceeding. The next character of movement to consider is shown in Item 4, page 5, which is Texas cotton that has

been concentrated at interior and delivered at the ports on the domestic rate. On this cotton, the carriers still would allow one cent unloading, making the next revenue 82 cents. Hence it would be an increase in the revenue by the difference between the 79 and 82 cents or 3 cents per 100 pounds, or 15 cents per bale, which is shown in Item 4, and the total increase is shown in Item 5 separately for back of the waterfront and waterfront plants at Houston, and [fol. 820] the same information at Galveston. The total increase at both Houston and Galveston is shown in Item 6, Columns F and L, respectively.

The next character of movement to consider is cotton now moving export or coastwise under through bills of lading to foreign ports, or under bills of lading to the ports. The carriers are now earning revenue on this character of cotton on the basis of 83.5 cents, and under an 83 cent scale, the revenue would be reduced one-half cent per 100 pounds, or 2.5 cents per bale. This decrease is shown in Item 7 for Houston and Galveston separately, amounting, at Houston to $1,473.12 and at Galveston to $26,499.03.

The total gain under the 83 cent basis and 20 cent allowance on the entire movement to Houston and Galveston is $88,935.75 which is shown in column M. This is only 2.3 cents per bale, or less than one half cent per 100 pounds on the Texas cotton crop handled through Texas Gulf ports during the season 1924-25. This is arrived at by dividing the total increase by 4,373,364 bales. This is the number of bales of Texas cotton that was finally exported or shipped coastwise through the ports of Houston and Galveston and it is arrived at by adding together all of the cotton shown on page 5. It includes everything handled at Houston and Galveston except cotton that was reshipped to the Pacific Coast, to New Orleans and to the southeast. In ite-, 9, page 5, is shown the effect upon the revenues if the allowance of getting cotton from waterfront plants to adjacent docks is fixed at 15 cents per bale, and the amounts are shown separately for Houston and Galveston in columns F and L, while the totals are shown in the same columns just beneath these figures. The gross increase is shown in column M opposite item 9. For instance, item No. 9 under column F, the top figures show $20,786.55. Adding that amount to the net increase or decrease of cotton shown

in item No. 8, just above that, column F, results in the figures $60,439.68, making a total loss or gain at Houston [fol. 821] on cotton, on which we make an allowance of 15 cents from waterfront plants to adjacent waterfront plants. This increases the net revenues of the carriers at Houston $60,439.68 and at Galveston $53,585.12, making a total gain of $114,024.80, which amounts to 2.6 cents per bale on the entire Texas cotton crop handled through the Texas Gulf ports.

In Items 10 and 11 are shown corresponding figures as to the effect of an allowance of 10 and 5 cents, respectively for getting cotton from water front facility to adjacent shipside docks arrived at in the same manner as the effect of an allowance of 15 cents as shown in item 9 on the same page.

Attention is called to the fact that in arriving at the number of bales handled from waterfron*y* facilities to adjacent shipside piers, we have used 25 per cent of the total handled at waterfront facility shown in item 2 at Galveston. This is based on the fact that the evidence in I. C. C. Docket 14940 reported in 100 I. C. C. 160-161, shows that 75 per cent of the cotton delivered to waterfront piers at Galveston was drayed to other piers for loading into vessels, leaving only 25 per cent trucked to adjacent shipside docks. Based upon Mr. Thornton's testimony the situation has changed at Galveston, and that all of the cotton is now handled by drays from the waterfront plants to adjacent waterfront plants as well as to other waterfront plants, and that will have the effect of wiping out the increases shown in columns J, K, and L, of $4,302.50 at the 15 cent allowance, $8,605.00 at the 10 cent allowance, and $12,907.50 as shown under the 15 cent allowance. In other words, the total increase will be the same as shown in column L, namely, $49,282.62, at Galveston, providing the 83 cent rate is put in effect and the 20 cent allowance is continued. At Houston there was handled from one waterfront plant to another by cars 142,120 bales and by barge 5802 bales. Of this, 85.6 per cent was cotton of Texas origin. For this reason we have used a figure of 126,690 bales as moved [fol. 822] at Houston from one waterfront plant to another.

Page 6 is similar in arrangement and detail as page 5, the only difference being that page 6 is based on a rate of 82.5 cents and page 5 on rate of 82 cents. It reads 83.

Page 8 is a recapitulation of pages 5, 6 and 7. Attention is called to the fact that each reduction of one-half cent per 100 pounds in the rate creates reduction in revenue of $109,334.10 and that each reduction in the allowance creates increase in the revenue of the carriers of $25,089.05. Under an 83 cent rate and a 20 cent allowance to waterfront facilities, the apparent gain is $88,935 and as shown by item 8, page 5, and that under an 82.5 cent and 20 cent allowance to waterfront facilities the apparent deficit is $20,398. I use the word apparent advisedly, because various factors will materially affect these figures adversely to the carriers. A one rate plan may cause a change or shift in the movement either as between waterfront and back of the waterfront plants or between concentration at the interior and concentration at the port, or a greater or less use of through bills of lading. For this reason, as this proceeding is primarily a fight between the variously situated cotton merchants and innocent bystanders in order to insure the preservation of the carriers revenues the Commission should give the carriers the benefit of every doubt. If an 83 cent rate will apparently result in a small increase in the carriers revenues, and an 82.5 cent rate will cause an apparent deficit in the carriers revenues, the Commissions, if a one rate plan is finally decided upon, should fix an 83 cent rate. From page 7 an 82 cent rate will cause a deficit to the carriers even if no allowance whatever is made to the waterfront facilities, or if the carriers are not put to additional expense of performing service which they are not now called upon to perform at the waterfront facilities. Notwithstanding the position of neutrality of the Texas carriers as to the one rate plan or the two rate plan, *et os* [fol. 823] felt that if there are any changes that are reasonably certain to occur if a one rate plan is adopted, they should be pointed out to the Commissions, and that it is in the interest of a proper adjustment which will protect the carriers revenues that they be shown and the carriers are sure that they will be considered by the Commissions.

The first character of movement on which the carriers net revenue is most likely to be affected, is that on which they will have to assume the cost of getting the cotton from the plants to shipside. At Houston there is in effect a rate of $8.10 per car applying on all commodities between points in

Houston and points on the ship channel including shipside facilities.

There was organized and put in operation at Houston, affective July, 1924, an organization composed of the lines serving Houston, called the Port Terminal Railroad Association. The Port Terminal Railroad Association serves facilities at the municipal docks and other plants on the municipally owned facilities along the Houston ship channel. The facilities are either owned or controlled by the Harris County Navigation District and Harbor Board, which insisted as one of the conditions upon which they would turn over these facilities for operation by the Fort Terminal Railroad Association, that a switching rate of $8.10 be established to apply between all points on the Port Terminal Railroad Association and all points on the member lines in the Houston switching district.

The carriers very reluctantly consented to this rate as an experiment, and including the Port Terminal facilities but have not yet done so and have extended the rate from time to time. It expires August 31, 1926.

[fol. 824] The Houston carriers recently requested the Railroad Commission of Texas to call a hearing to determine whether this rate should be extended or to fix a proper rate for the service. The hearing was called for June 22, but by agreement between the carriers and the Harbor Board the rate has been extended until December 31, 1926. In the meantime, some agreement may be effected for an increase in this rate, or for a further extension until there is an opportunity to have a scientific study of the cost of this switching, or there may be a hearing before the Railroad Commission of Texas on the subject.

The Houston cotton exporters have availed themselves very extensively of this $8.10 rate, as it is the most economical method of getting cotton to shipside. The more bales they can get in the car the less cost is per bale. By loading 80 bales to the car, which involves expense of topping of 10 cents per bale on about 30 bales, the total cost per bale is about 14 cents, on all of the bales in the car.

During the season 1924-25, there were handled in cars at Houston in switching service 906,000 bales. The average load was 80 bales. The rate was $8.10 per car, or 10 cents per bale. There will be no incentive or obligation on the

part of concentrators to load cars so heavily, as it will involve topping at a cost of 10 cents per bale on from 20 to 30 bales, there is no reason to expect the average load to exceed 50 bales.

On the cotton handled at Houston in 1924-25 there were 673,000 bales at back of the waterfront subject to first concentration, which required over 8,000 cars. To handle the same number of bales at 50 bales to the car, would require 13,500 cars, or 5,500 additional cars. That is if the average [fol. 825] load were reduced from 80 to 50 bales, and once a minimum is prescribed the shipper will be free to take as few as 25, or even 1 bale. Assuming the cost to be only $8.10 per car, the additional cost of handling would amount to $45,000.00.

There were also 126,000 bales handled from one waterfront facility to another, which required 1,500 cars, but would require 2,500 if loaded 50 bales to the car. This would mean an additional expense of at least $8,000 based on the present temporary unremunerative rate of $8.10 per car. The charge for second concentration is only 3.5 cents per 100 pounds or 17.5 cents per bale. The present high cost of drayage makes it to the interest of Houston concentrators to avail themselves of this privilege, but on this character of cotton also they will not be obligated to load any particular quantity, and cannot be expected to load more than 50 bales to the car, as it will involve extra expense of topping. There were 150,000 bales of this handled by back of the waterfront concentrators, which required about 1,900 cars, but at 50 bales to the car would require 3,000 cars, a difference of 1,100 cars, which, even at $8.10, the present temporary unremunerative switching charge, would mean $8,800.00 worth of additional free service performed by the carriers. These figures do not take into consideration the fact that the heaviest movement is at the season when the next largest commodity handled by the carriers, grain, is moving, and when there is the greatest demand for cars. These cars would earn the carriers vastly more than $8.10 per car in this or in fact any other service. Nor do they take into consideration the additional motive power which will be needed for such additional cars.

There are a number of other ways in which the revenue of the carriers will be affected, and the apparent increase

of $88,935.75 under an 83 cent rate and a 20 cent allowance will be cut down. For instance, our computation shows an [fol. 826] increase on Texas cotton concentrated at the interior, delivered destination on the intrastate rate. These figures were obtained from the concentration claims themselves.

Some of this cotton was changed to the export rate after it arrived at Galveston, and is included in the Galveston statement of export cotton on which we sustained a loss of .5 of a cent per hundred.

This did not occur to us until after these exhibits had been prepared and there was not time to follow each and every shipment to destination to determine the total number of bales that were so changed. However, our auditor has, at my request, checked the billing attached to such concentration claims for the month of November, 1924, and found that a total of 1,727 bales out of 42,921 bales billed at the local rate were changed before delivery at Galveston to the export rate. This was 4 per cent of the total number of bales concentrated at the interior consigned to Galveston. If this percentage held true for the rest of the season and for all lines there were 4 per cent or the 505,211, or 20,000 bales that were changed. We have shown on this a gain of 3 cents per hundred, or 15 cents per bale, which will amount *of* $3,000, and the apparent gain on this character of cotton would be that much less. This should not be deducted from the cotton shown on pages 5, 6 and 7, as the export. figures shown thereon were obtained from a check at Galveston of the freight bills themselves. In addition to the salary expense for the handling of additional claims, the supervision, stenographic, stationery and rental expense will amount to at least .2 of 1 cent more, making a total of 1 cent. On the additional cotton we expect to have to concentrate under the one rate plan. In addition to this our auditor has computed the additional cost of handling such claims at .5 of 1 cent making the total cost of 1.5 cents per bale. There was available for first [fol. 827] concentration at Houston 1,216,586 bales, and at Galveston 1,256,506 bales, a total of 2,473,092 bales. The expense of handling these concentration claims, therefore, would be, at 1.5 cents per bale, $37,096.38. Under a one-rate plan there will be concentration claims filed on 2,473,-

092 additional bales—that is a minimum estimate. We have computed this 86,050 bales at 5 cents per bale and shown that the carriers' revenues would be increased $4,302.50, or 25 per cent, on this movement, which we figured would go to adjacent docks. We have also computed this on a 10 cent and 15 cent allowance. All of these 86,050 bales should also be on a 20 cent allowance, and the figures opposite items 9, 10, and 11, column L of pages 5, 6 and 7 should be obliterated entirely, and the figures in column M opposite these items will be the same as shown in column E opposite items 9, 10 and 11, as representing the total loss or gain in the revenue that will accrue to the carrier under an 83, 82.5 and 82-cent rate.

There was handled at Houston 275,000 and at Galveston over 500,000 bales of this cotton, which was concentrated a second time. This would impose upon the carriers an expense of 20 cents per bale, or $155,000, for which they would not receive any compensation in transportation economy. In fact, it would involve the handling of additional concentration claims which has been shown to cost 1.5 cents per bale, or over $10,000.00. This item alone would entirely wipe out the apparent gain even on an 83 cent basis. In fact, it would cause actual loss. It would amount to .4 of 1 cent on 4,373,364 bales, the total number of bales of Texas cotton that moved to foreign or coastwise destinations via the ports of Houston and Galveston. For this reason, if the Commission should find a second free concentration at the ports to shipside at such ports necessary to acoid discrimination, the carriers respectfully represent that they must have a rate of 83.5 cents on Texas cotton to preserve their present revenues. If, as a result of the one-rate plan, the port concentrators discontinue buying concentrated cot-
[fol. 828] ton from interior concentrators, and purchase it at the country stations and ship it compress in transit without interior concentration, or if they purchase a larger volume of the free city cotton at compress points, then the revenues of the carriers will be affected in that we have shown on the cotton previously concentrated at the interior that we would gain 15 cents per bale.

There were during the 1924-25 season 518,919 bales delivered at plants back of the waterfront at both ports, which had been previously concentrated at the interior. This num-

ber of bales at 15 cents per bale amounts to $77,837.85. This amount very nearly wipes out the apparent increase of $88,935.00, as shown in column M, page 5, as the increase under the 83 cent rate. There would be a corresponding effect on the computation shown on pages 6 and 7 where increases of 12.5 and 10 cents have been figured instead of 15 cents as figured on page 5.

We are firmly of the opinion that at least an 83 cent basis is necessary to preserve these revenues under a one-rate plan, and that the figures we have presented justify such a basis, which we respectfully request be prescribed if a one-rate plan is prescribed.

[fol. 829] The amount of drayage the carriers are actually paying at Galveston is 20¢ per bale. I made an investigation through our accounting department, I wrote our Agent at Galveston, and I personally talked with the agent and with a man who actually handled the vouchers for the payment of dray claims at Galveston. The charge is uniformly 20¢. There have been a very few claims filed by one firm at 18¢. Referring to page 5 of Exhibit 189, if no allowances were made for handling there would be no concentration. We think it would be the same as under the 5¢ (R. 3887) allowance on our revenue. That applies also to pages 6 and 7, where the 5¢ allowance is shown. That would apply only to water front facilities in cases where no concentration was taken. On page 3 there is a note at the bottom reading: "Figures making reference to notes are taken from the annual report of the Houston Cotton Exchange." That refers to Item 6-A re-shipment from Houston to the southeast, Pacific Coast and New Orleans, and after it should be added in parentheses "Note: that is the only figure in this exhibit which is based on the annual report of the Houston Cotton Exchange." On pages 5, 6, and 7, Item 7, there is a statement: "Reduction in revenue on cotton handled on through export and coastwise bills of lading." That should read: "On through export and coastwise bills of lading or bills of lading to the port for export and coastwise movement." It has no effect upon the computation, (R. 3838) because the rate is the same on through export bills of lading as on the bills of lading to the port, so far as the rail service is concerned. Page 5

states that it is based on an allowance of 20¢ per bale for delivery to shipside from non-adjacent and from back of the water front facilities and allowances for delivery to shipside of 20¢, 15¢, 10¢ and 5¢ per bale from adjacent plants. On cotton moved on through bill of lading, export bill *od* lading, in getting that cotton within reach of the ship's hatch, the carriers are paying for the unloading 4¢ a bale at Houston and 5½¢ a bale at Galveston. That is all the expense we are put to except for the terminal switching. The terminal switching is not involved in all of it, [fol. 830] because some of the cotton at Galveston, for instance, is delivered on our own rails, to the Galveston Wharf Company for delivery to consignees on our rails or delivery to shipside. As a matter of fact, there were only 59,000 bales of that kind of cotton handled at Houston. There is no difference to us in the cost of handling at the ports, adjacent facilities, water front facilities on cotton shipped on domestic bill of lading endorsed for export. The service we perform is the same (R. 3890). I am talking about physical service. We make a contract with a Stevedore concern for unloading all of our cotton. We make provision in this contract that the contractor for unloading would allow any one who operates a private dock exclusively to unload his own cotton and we pay them the same price that we pay the regular stevedores, and we also make a contract on the same basis for handling certain products, cottonseed products and things of that kind, on the same basis that we would pay our regular contractor to perform the same work. I do not think there is any good reason for the difference in price at Houston and Galveston. I think we probably pay a little too much at Galveston, but the Galveston Wharf Company charges that much and we can not get any private individual to take it for any less. We have no contract at Galveston. That is handled by the Galveston Wharf Company. On our cotton moving on through bills, the storage is included in the rate; those computations do not include the wharfage (R. 3892). On a domestic bill of lading where the 80¢ rate should apply going to a shipside facility, we would absorb 1¢ per 100 pounds at Houston for unloading. We can have the unloading performed for 4¢ on export traffic (R. 3893). The allowance is not made to the same

people and there is not the same volume. The unloading at the docks is very much larger volume than it is at the various compresses. We make the allowance of 1¢ per 100 [fol. 831] lbs. under the 80¢ rate regardless of where the traffic was delivered at Houston. That is what we are able to have it contracted for at Houston (R. 3894). We pay 5½¢ on one and 4¢ on the other at Houston, but it is not identical service. It is not performed in the same place or in the same volume. One contractor at Houston has the contract with all railroads at Houston to unload all of the cotton for export and coastwise. It is not an allowance (R. 3895). There is very little expense connected with investigating the claim for the unloading allowance of 1¢ on the 80¢ rate. We get the claims amounting to 1,500 or 2,000 bales at one crack, and all that is necessary to do is for the Auditor to cancel the freight bills. The Auditor has to check them back against the Records. The nature of the freight bill is evidence itself that it was not concentrated at the port, and if it was not concentrated at the port it is entitled to the unloading allowance. The Western Weighing and Inspection Bureau has to cancel all freight bills, as they do on all cotton moving through the ports of Galveston and Houston (R. 3896). The allowance of 1¢ for unloading is made regardless of where it is unloaded. The shipper may unload it at a back from the water front facility or he may unload it at a water front facility.

Cross-examination:

Exhibit A-189 is based on the assumption that there will continue to be in the future no greater movement of through export cotton or for export cotton, that is, bills of lading (R. 3897) marked for export or coastwise cotton where the 83½¢ rate applies. I have not the exact figures, but there has been some decrease in the amount of through export cotton moving through the Texas ports, in the last three or [fol. 832] four years. I do not know whether the establishment of the one rate plan would have a tendency to increase the volume of through export movement. I do not think it is safe to speculate. It would affect our revenues if a portion of the traffic was handled under through export bill of lading coastwise movement. If the amount of export cotton

were decreased and the amount of compressed in transit cotton were increased accordingly, it would (R. 3898) affect our revenue. It would depend on what became of that character of movement. I think it would be impossible for the cost of getting to shipside from the various plants at Houston to be as low as 10¢ per bale (R. 3899). If no allowances were made to the shipside plant for getting to the shipside, we would get the full 83¢ on that cotton. The haul would not be as long as the haul to Galveston, and if no allowance were made, it would naturally follow that we would get more revenue out of that than we did out of the cotton we moved to Galveston. In estimating what should be one rate, we have assumed that the condition will remain just as it is. No one can foresee (R. 3900) the effect that the one-rate plan would have on the character of movement as between compressed in transit, concentrated in transit, as between export and local, as between cotton handled by dray and cotton handled by barge and cotton handled in cars, but we think that the changes are matters for speculation entirely, and it was not safe for us to speculate in figuring the effect on our revenue. We did make allowance in our exhibit for the increase that would occur under the 83¢ rate to shipside facilities if no allowances were made (R. 3901).

I did not testify that there was a greater cost of switching to the facilities at Houston than there was at Galveston. [fol. 833] I did not go into any comparative study of costs in this case for the reason that we do not have any switching at Galveston. The charges at Houston are uncertain because of the stop period on their application and because of the construction of two boulevards to the shipside channel.

I have been informed by officials of the Houston Compress Company that they intend to build an 800 ft. additional facility on the ship channel. The work is already under way so far as the preparation of the ground is concerned (R. 3907). I am familiar with the recent announcement about building a $5,000,000 cotton warehouse and compress at Manchester. That would be a shipside facility. These facilities will have to take cotton away from existing back of the water front facilities, water front facilities, or the interior. There is an additional expense in getting from up-

town at Houston down on the ship channel, to the extent of the cost of the switching by the Port Terminal Railroad Ass'n. On a car coming in over our own line for up-town Houston versus a car going down on ship channel, there would be the same difference in the expenses, so far as traffic going to the Port Terminal Railroad Association is concerned (R. 3907). We have no cotton facilities on our own line on ship channel that are adjacent to the water front. The new Manchester facility will not be on our lines; it [fol. 834] would be on the Port Terminal Railroad Association. On all the cotton coming in over our lines going directly to the ship channel, we would have an additional expense of making delivery on the ship channel versus making delivery uptown Houston, to the extent of handling the switching service by the Port Terminal Railroad Association. We deliver our line haul traffic to the Port Terminal Railway Association. That is all the assembling service that occurs going to the points on our lines, and in addition to that the expense of handling by the Port Terminal Railway Association. We deliver it to them on inter-change. On a car coming in over our line going directly to the Houston Compress and Warehouse Co., that is served by the International & Great Northern Railway, we would have the same expenses that we would have on a car going to the Port Terminal Railroad Association. So far as the International & Great Northern is concerned, I imagine that expense would be the same in handling from our (R. 3908A) interchange to the Houston Compress Company as the expense of the Port Terminal Railroad Ass'n. handling from our inter-change to the facilities on their line. We make delivery direct to the International & Great Northern, and they would take it down to the Booth Yard, and there rehandle it. It first goes through our regular breakup yard, classified, and delivered to the International & Great Northern the regular inter-change.

[fol. 835] I understand that they would draw it to the Congress Street yard, where it would be classified in going to the ship channel. I know that only from hearsay (R. 3909). There might be some traffic handled by the International & Great Northern to the Houston Compress which would not go through the Congress Street Yard, because they have quite a movement from their five compresses

where the Farm Bureau traffic is handled going direct to the Houston compress, and they might at times have sufficient of that traffic in to require it to be handled through the Congress Street yard. There might be some handled from Booth Yard for classification from our Interchange, or from their Percival yard to Booth yard, rather than from Congress St., but the extent that traffic is diverted and increases the business of the Port Terminal Association from our line, our expenses of making delivery will be increased over the deliveries on our own railroad. They have not given consideration in this computation to changes of that kind. We have given this thought: That the expense for handling will be at least 20 cents a bale. That is in instances where the Terminal Railroad will effect delivery where we are now effecting it ourselves (R. 3911). I do not calculate that that 20 cents would represent the difference between our costs. I have not attempted to calculate the difference in the cost. I did not testify on direct examination that there was a difference between the cost of delivering line haul traffic on our rails and the cost of delivering traffic to the Port Terminal Association. I simply testified as to the expense of handling cotton from plants in Houston to shipside, as we would have to pay that expense under a one-rate plan on cotton that had not been previously concentrated, and might have to bear at less revenue the 3½ cents for second concentration on cotton if it previously had been concentrated in the interior (R. [fol. 836] 3912). Item 4 shows that we calculate we will receive the increase of 3 cents on 151,934 bales at back of the water front and 122,241 bales at water front facilities at Houston. We deliver that 151,934 bales now at 80 cents. We allow 1 cent unloading. Under the one-rate plan of 83 cents, that will become 83 cents, but we will still allow 1 cent unloading. That will be a difference between 79 and 82 cents, that is, 83 cents less 1 cent unloading under the 83 cent rate, and 80 cents less, under the present 80 cent rate the difference of 3 cents, or 15 cents a bale. We have no further handling of that cotton, because it has been previously concentrated. There is no provision that the shipper may concentrate that cotton except at a charge of 3½ cents per 100 pounds (R. 3913). That is presuming we make the 20 cent allowance to them as we do to others.

I have now shown also the effect where we make no allowance charge, and making 5 cents allowance is equivalent to no allowance at all, because they would not deliver the cotton for handling to shipside but would take the allowance of one cent for unloading, which would make the same result. I have made no computation based on making no allowance at all (R. 3915). Exhibit 189, page 5, shows that after we had deducted the reshipment all-rail, we had left of Texas cotton delivered to the water front facilities at Houston 542,421 bales. In addition to that we had 122,241 bales of Texas cotton which had been previously concentrated in the interior. In our computation of Item 2, we have assumed that we may have to make a 20 cent allowance on the full 542,421 bales. In Items 9, 10, and 11, we have assumed that we may have to make an allowance of 15, 10, or 5 cents on 415,731 bales of the 542,421 bales. We deducted from the 542,421 bales the 126,690 bales that were moved from one water front facility to another water-front facility. By adding together the 415,731 bales and the 122,241 bales, we get the total bales of [fol. 837] Texas cotton delivered to plants at the water front at Houston which were not moved to any facility other than the adjacent wharf (R. 3916). Adding 415,731 and 122,241, it makes 537,972 bales at Houston going to shipside facilities on which we would receive an increase of 3 cents per 100 pounds in the event no allowance is made to the shipside facilities for delivery to the wharf (R. 3917). The carrier would take a loss on 58,925 bales at Houston by reason of the reduction in rate. On cotton that has not been previously concentrated, we get an increase of 4 cents, and that would be offset by the allowance we make on the cost of getting it to shipside, about 20 cents. So there would be no increase or reduction (R. 3919). At Galveston we show 138,226 bales delivered to shipside on which we will get an increase in revenue and that represents the cotton that was previously concentrated at interior points. 344,202 bales were delivered to the shipside facility at Galveston that was not previously concentrated at the interior. That was delivered at water front plants under the domestic rate of 80 cents. It did not go direct to ship because it was delivered on intrastate rate. I do not know whether or not the facility to which we delivered it made

direct shipside delivery (R. 3920). At Galveston we would receive an increase on only 138,226 bales. The only increase to us at Galveston is on cotton that has been previously concentrated in the interior, and received at the port on the intrastate rate (R. 2931). That consists of 366,985 bales at the back of the water front plant and 138,226 bales at the water front plant. We would receive an increase on only 506,211 bales at Galveston (R. 3922). On page 3 of Exhibit A-189, the 274,175 bales had been previously concentrated in the interior. The 80 cent rate was applied on it. The 80 cent rate was applied on the 56,814. We made no survey of previous concentration on cotton delivered on export or coastwise rate (R. 3923). In regard to the item of 274,000 bales, we investigated and had the claim [fol. 838] records of every Railroad investigated, and instructed compilation of figures as to the number of bales in these claims that moved to the port under the intrastate rate (R. 3924). The claims themselves show it was concentrated. I know that the 274,175 bales had been concentrated and merchandised in the interior before it reached the port (R. 3925). On page 4, there is 505,211 bales of the same character of cotton. That is part of the back of the water front and partly water front (R. 3926). In regard to the reason for not assessing the export rate on cotton that has been concentrated at the interior and shipped to the port, I could answer two ways. We have to be governed by the tariffs. There is a tariff (R. 3927) applying the 80 cent on intrastate shipment, and the 83½ cent rate on export shipment. I do not know whether any of the 700,000 bales that had been merchandised and concentrated in the interior is reaching the shipside without rehandling and re-merchandising at the port. It does not necessarily indicate that (R. 3928). Taking Exhibit A-32, a drawing of the floor plan of the Houston Long Reach plant, and assuming that this warehouse is located back of the water front in Houston, and taking cotton stored in Compartment No. 3, assuming that the warehouse is going to handle that cotton to us for movement to shipside, I say that our responsibility will begin when that cotton is loaded in the car for movement to shipside. If they call upon us to make delivery of that cotton to shipside, we would have a right to require them to load it into the car before we

would sign the bill of lading. I do not see any reason why we should make an allowance to them for breaking the cotton out of Compartment No. 3 and trucking it out to the platform. It would be our privilege to require the shipper to load the cotton in a car on our adjacent track (R. 3932). That devolves upon the water front as well as the back of the water front men, if he expects us to perform that service of getting it to shipside (R. 3933). We would not make [fol. 839] the back of the water front man an allowance for moving it out of Compartment No. 3 and trucking it either to the front or back platform. We are not called upon to perform that movement from back of the water front to shipside at Houston, because they handle it as a separate independent proposition, as a carload of cotton, by switching. They do not take transit on it. We will not make an allowance to the water front man, we would not be called upon to do so, because we would require him to deliver the cotton into (R. 3934) the car outside of the platform. We are talking about the one-rate plan. He has paid 83½ cent rate, which will take the cotton to shipside, and the rate to the back of the water front and to the water front plant being the same rate, he can tender it to us, he having paid the full charge. On an export bill of lading, for that matter, from Houston to foreign points, he puts it into the car, and we do not know anything about the expense he has incurred in getting the cotton into the car. The assumption based upon 20, 15, 10 and 5 cent allowance to the shipside man is based on the fact that that is a maximum amount we would pay the contractor rather than handle it ourselves. We do not make allowance today at Galveston except for the expense of getting cotton to shipside. Whether he pays 20 cents to the drayman for handling his cotton to shipside, we assume he gets that cotton outside the compress or warehouse. It does not include any intra-plant service (R. 3935). In switching cotton from the Long Reach warehouse to another warehouse, the allowance to them for that switching service should not, in my opinion, include any of the cost of breaking it out of Compartment 3 and trucking it to the platform and loading it into the car ready for switching (R. 3939). It is not my position that the carriers should pay the Houston Compress Company [fol. 840] any part of the expense of breaking the cotton

out of Compartment 3, trucking it to the platform, and loading it in the car, getting it ready to go to Weatherford, Crump & Company plant (R. 3940). Page 5, of Exhibit A-189, opposite the Item 8, figure 8 under Column J, shows 1,095,961 bales that were moved under export bill of lading, port of coastwise bill of lading, or through bill of lading, and assuming that a large part of it moved under through rate from a point in Texas to New England territory, the reduction in the export rate to Galveston would affect the revenues on that traffic, because the rate is based generally on combination on Houston, and as the rate to Houston was [fol. 841] reduced from 83½ cents to 83 cents, then the through coastwise rate to New England points would be reduced accordingly. If there are a great many of these rates lower than the combination on Houston to Canadian mills and New England mills today, then our revenues would be reduced on the rate to Galveston for export or coastwise. I have not included shipments on which we would not lose 2½ cents. I will qualify my statement. Where the rate is not based on combination, it would possibly affect the revenue, but practically none. If the rates were based on combination, then our revenues would be affected, but that is a very minor thing in importance (R. 3942). On cotton which is brought to Houston or to Galveston to the waterside concentrator, today that waterside concentrator files a claim on every bale of cotton for refund of unloading charge to be recovered from the railroad, if he does not concentrate it and reship it. If he concentrates it and reships it, he files a concentration claim anyway. We do not exactly consider the claim for the unloading allowance a concentration claim; all that is necessary to support it is the freight bill itself. About other concentration, the expense is very much greater, because you have to get back the bill, check claim against the bill, and also on the unloading you have to check the through rate and you have to rearrange and readjust your divisions with the other lines and you have to check to see whether it has had previous concentration or not. Those are three factors you don't have on the other (R. 3943). Under reciprocal routing, where the cotton was delivered to the ship's berth at the port, we would have to readjust the division, because we would have to allow the other line the division after deducting the proportion for

the line beyond, say to Galveston or to Houston. At Galveston where there is no reciprocal routing to the water front, we would have to go to additional expense in handling those particular claims that we do not now incur in handling claims for the one cent unloading; we would have [fol. 842] to pick the claim out if we did not have previous concentration. I do not know if there would be any particular expense, (R. 3944) unless at the division there was some arrangement made with the line for reciprocal routing from Houston to shipside. There is a question of per diem that enters in, readjustment of per diem between the lines at Houston that bring the cotton in and the lines that take it to shipside. You would have that expense you do not have on unloading claims. Also, unloading claims are generally filed in very large numbers. I do not think the other claims would be filed in very large numbers I believe they would be filed in bill of lading lots. If they were not, it would reduce the cost per bale, but the bill of lading lots are as low as 50, and our average cost per bale is based on the assumption that they were to file the claims in bill of lading lots of 200. At the present time on cotton which is concentrated at Galveston and delivered to the Mallory-Morgan Steamship line for reshipment to New England Mills, where the combination is higher than the through rate, the Galveston concentrator files claims against us on that particular cotton (R. 3945). We allow today the expense of getting that cotton to the dock, not to exceed 20 cents. We assume that we could continue to have that number of claims handled and in addition thereto we would have claims that would arise under a one-rate plan. That character of cotton would be included in the 1,059,961 bales (R. 3946).

Redirect examination:

Exhibit A0190, is a statement showing the effect upon carriers' revenue of the one-rate plan applied to 909,787 bales of cotton from Arkansas, Oklahoma, and Louisiana, based upon result per bale on revenue on cotton moving from Texas points to Galveston and Houston during the 1924-25 season. The figures on page 2 of my exhibit A0189 indicates that 1,065,071 bales of Arkansas, Oklahoma, and Louisiana cotton were received at Houston and Galveston.

Galveston receipts include 71,480 bales from these states that were reshipped from Houston, and this figure deducted [fol. 843] from 1,065,071 bales leaves 993,591, net receipts at both ports from these states. Of the 993,591 bales, 83,804 were reshipped under transit to the Southeast, Pacific Coast, New Orleans, and other interstate destinations, leaving 909,787 bales that were put aboard vessels at Houston and Galveston. We have shown the rate per bale under each rate and under each allowance, on page 8 of Exhibit A-1189. We have applied the same rate per bale to each of the rates and under each allowance under each of these rates and obtained the figures shown in this exhibit.

My exhibit A-191 is a compilation of the figures on page 8 of my exhibit A-189, which shows the effect of the one-rate plan under the various rates and allowances on Texas cotton delivered at Galveston and Houston (R. 3948). Exhibit A-191 is a consolidation of page 8 of exhibit A-189 and A-190. We have not classified the change in this case as we did with Texas. We have simply arrived at the effect per bale on our rates under Texas on Texas cotton and applied the same rate per bale on the cotton that moved from Arkansas, Oklahoma, and Louisiana to the Texas Gulf ports (R. 3949). My exhibit is based upon the assumption that the movement from Oklahoma, Arkansas, and Louisiana would be the same relative amounts moving on through bill of lading, the same relative movement under coastwise or export bill of lading, the same movement under depot delivery, and the same amounts that had been previously concentrated. I do not know whether it is a fact or not. We were unable to secure figures as to the amount of cotton previously concentrated at the interior and moving to Houston and Galveston under the domestic rates in time to or sufficiently complete to make the same computation on Oklahoma, Arkansas, and Louisiana as we did on Texas. Therefore, we assume that the relative amount is just the same as on the Texas cotton. (R. 3950).

[fol. 844] WITNESS W. B. DRAKE

I am Superintendent of the Port Terminal Railroad Association, Houston, Texas. I have had three years' experience in the operation of railroads. (Mr. Reed): His

qualifications are admitted.) The Port Terminal Railroad Association is an organization maintained by the Houston Railroad to serve the public docks and channel industry. All the lines entering Houston compose it. We receive from the different dealers and lines business destined to the docks, warehouses and industries along the (R. 3951) channel, and deliver it to the consignee. Referring to exhibit A-121, filed by Mr. Griffin, showing a map, our Northside classification yard is represented by location No. 7 in the legend of the map. Our facilities extend towards the lower right-hand corner of the exhibit, along the ship channel on both sides of it. (R. 3952). We perform only as a switching carrier. We perform no road haul service. The Port Terminal Association interchanges traffic with the Southern Pacific, Katy, Gulf Coast Lines, Texas and Pacific, and the Houston Belt Terminal in the North Classification Yard. That is shown as No. 7 on Exhibit A-121. The Port Terminal Association interchanges with the International and Great Northern at a point approximately opposite the letter P near figure 8 on this map. We serve 11 docks, 11 industries, and 2 warehouses back from the water front. My exhibit No. A-191 shows the cost per car of all switching service performed by the Port Terminal Railroad Association from July 1st, 1924 to June 30th, 1925, as one period, and from July 1st, 1925 to April 1st, 1926 as one period. (R. 3953). All expenses of operation and maintenance are included in this exhibit. The average cost per car as shown by the exhibit for the period beginning July 1st, 1924, to June 1st, 1925, is $4.79. The average cost per car as shown by the exhibit for the period July 1st, 1925, to April 1st, 1926, is $5.00 per car. The average cost for the entire period of two years from July 1st, 1924, to April 1st, 1926, is $4.8779. The average cost shown on the ex-[fol. 845] hibit is arrived at by dividing the total expenses for operations for the entire period by the total number of loaded cars handled. (R. 3954). Our entire expense is switching expense. This average cost does not include per diem cost. The per diem is paid by the member line in accordance with the number of cars they handle. The average detention of cars on the Port Terminal Railroad Association is 4.45 days. (R. 3955). The per diem cost, in my opinion, should be added to the average cost in order

to obtain the entire cost. We receive a large volume of cotton for the Turning Basin Compress in both the Northside and Southside yards. (R. 3956). No. 7 represents the Northside yard. We receive our traffic from all the railroads in Houston at that point, except the International, Great Northern which we receive on the southside location P. We do not receive any traffic at the Booth Yard, except the International & Great Northern. The distance from the North yard to the Turning Basin Compress on 7 and 8 and the distance from the International & Great Northern Interchange is 1.75 miles. The distance from the North Classification Yard to docks 11, 12, and 13, is 1 mile. The distance from the North yard to the International & Great Northern is 1.34 miles. The distance to the Manchester wharf is 4.2 miles from the North yard, and 2.5 miles from the South yard. From the North yard to docks 1, 2, 3, and 4 is 1.75 miles. (R. 3957). And from the South yard is .2 of a mile. The Turning Basin Compress takes the most cotton. They probably receive half of the cotton we handle. I am familiar with the new facility that is being established on the ship channel; it is 5½ miles from the North Yard and 4½ miles from the International & Great Northern. It is the intention that this building will be in operation this season. (R. 3958). From my experience in operating the Port Terminal Railroad Association, I would say that the cost of handling cotton between cotton facilities and our line is greater than the average cost for traffic as shown on my exhibit No. A-192. It is a [fol. 846] special service; it comes to us in transfers mixed up in other freight, has to be blocked out to the various docks and compresses and then delivered. On our general run of traffic, it comes to us in train-load lots. We handle trainload lots for the Manchester industries, which are the Texas-Portland Cement Company, the Deep Water Refinery (R. 3959), The American Maid Mills, the Sinclair Refinery, the Clown Refinery. To handle in trainload lots would tend to decrease our average cost. We handle empties into the Portland Cement plant and loads out. In addition to the service of the Port Terminal Railroad Association, the other carriers, on cotton originating at back from the water front plant at Houston, make it up, move it to their main classification yard stock, put it in the Port

Terminal Railroad transfer prior to delivering to us. (R. 3960). I was formerly Superintendent of the International and Great Northern. I am generally familiar with the Houston Terminal and the operation of the lines in that Terminal. I would say the service of the various facilities to get the cotton to our Interchange is greater than the service of the Port Terminal in delivering from the Interchange. It is my opinion that it is 50 per cent greater. I am familiar with the method of the International Great Northern in switching to the facilities of the Anderson, Clayton & Company, Sprunt, and Magnolia. I would say that the expense of the International & Great Northern in switching cotton between Booth Yard and those plants is greater than the average expense shown for the Port Terminal Railroad Association on exhibit A-192. It has to be switched out a great number of cars by the car; they order it in by particular individual cars. In our case, we have 25 cars to the Turning Basin Compress, and put on one or two tracks that are furnished. (R. 3961). We do not have to deliver it car by car. The International Great Northern performs other services than the services in Booth Yard to the plant on cotton from back from the water front from the Booth Yard. There is at least a move of five miles, reaching the Booth Yard, returning back from the back from the water front compress. The expense of the operation of the Port Terminal Railroad Association is [fol. 847] divided on the number of cars handled by each line. It is based on the number of loaded cars interchanged with the Port Terminal Railroad Association by the other line (R. 3962). The per diem assumed by each line would approximate $4.00 on each car.

Cross-examination:

We do not receive cotton which would be destined to move to the Long Reach and Sprunt Plants on the International & Great Northern. The cotton we receive would be only that cotton which was destined to the facilities that we serve, unless in exceptional cases they might divert the car from the Turning Basin Compress to handle and before we had shifted to Long Reach (R. 3966). The .2 of a mile is on the south dock only. In that event the cotton is coming into

our facility, going to the Turning Basin Compress and that would be a haul of one mile. If it came from any line other than the International & Great Northern, it would be received in Yard No. 7, the North Yard. If it came from the International & Great Northern, it would be received in the location near P on the South side of the turning basin. I do not know the extent to which the International & Great Northern uses the Percival Yard on the North side to classify cotton moving to the ship channel. I do not know of any reason why they could not classify that cotton in the Percival Yard and move it direct to Booth Yard or to facilities on ship channel (R. 3967). The operating convenience of the carriers may determine the point at which the classification service is performed, as well as physical conditions in the yards. The practice may vary as conditions vary. If there were sufficient classification yards at Percival Yards on the North side, for the shipments to be broken up, segregating those that are to go uptown and those that go down to the channel, I know of no reason why that should not be done. I think that the International & Great Northern does in fact classify to a certain extent its cotton movement received in Percival Yard. I do not know [fol. 848] to what extent (R. 3968). The Southern Pacific classify their cotton in Booth, Hardy Street, and Englewood yards. They might handle it at any of its other yards, according to its own convenience. We get the Santa Fe cotton through the Houston Belt & Terminal Railroad at our North Classification Yard, represented by figure 7. The Santa Fe would receive that cotton in the South Yard marked No. S. That is the Houston Belt & Terminal Yard; the Santa Fe delivers it to them at that point. It would be classified there and moved to our facilities into our North Yard No. 7. It is 10 miles from our North Yards to the eastern limits of our line. There are industries in the Southern or Eastern end of the line, and we have a very heavy movement to and from those industries (Record 3969). That movement would be substantially greater in amount and length of haul that the movement to the cotton docks we serve. We do not deliver train lots to the American Maid Flour Mills. We would have a train lot going down to the group of industries at Manchester which includes the American Maid Flour Mills. It would be set

out to each particular industry after it got there. We would not put the cars in order to serve the various industries before we took them out of the North Yard; that would be done at Manchester (R. 3970). Classification in the North yard would be necessary only to the extent of lining up Manchester industries on one track regardless of the industry. I have not undertaken to segregate and determine the cost of handling any particular class of traffic, or handling to any particular industry as contrasted with other classes of traffic. Taking ten cars originating in the interior consigned to us upon a through bill of lading and originating on the International and Great Northern, at Palestine, and taking ten cars consigned to the Houston Compress Warehouse facility marked P on Exhibit A-121, on a local Texas domestic bill of lading, those 20 cars coming in on the International & Great Northern yard train, into the yard marked 5 on Exhibit A-121, there would be no difference in the service of handling those cars from Yard 5 down to the ship's channel (R. 3971), assuming that they arrive at Percival Junction in the same train. If 10 of them are going to [fol. 849] the public dock for export, they would be placed on interchange tracks in that yard for the Port Terminal Railroad. The International & Great Northern would give it to us at about No. 8 on this map, and if it belonged to the Turning Basin we would take it over to North Yard No. 7 and classify it, but if for the public dock on the South side, we would place the whole 10 cars into those tracks. The 10 cars going to the Houston Compress Company would be ordered in a car at a time and by car number, or they might be ordered in all at one time (R. 3972), and that would involve additional cost and additional switching on the part of the International & Great Northern. It would be more costly than setting in the 10 cars to the public dock. If one car was consigned to the McFadden Plant via the Congress Street Yard, and the other ten are consigned to the Houston Compress Company on the ship channel, they would come in from Palestine in the Percival Yard, shown as Symbol 5 in Exhibit A-121, in the same train. The one car would be placed in a separate cut for the Congress Street yard. All of the cars would not be brought to Congress Street

Yard for classification; they would make the classification in Percival Yard. Only trains would pass through the Congress Street Yard (R. 3973) going to Booth Yard or the Long Reach Wharf. The others would be destined to Congress Street Yard, having in the train cars of the McFadden Warehouse and other industries in that section. There would be additional cost to the carrier in going on to the Ship Channel over what it would cost to come down to the Congress Street Yard and place it. There would be a material cost. It would have to average $5.00 shown on Exhibit A-192 plus the cost of bringing it from the Congress Street Yard down to the Interchange point. That would be way and above what it would cost to bring the car down to Congress Street Yard (R. 3974). The varying distances [fol. 850] which I gave from points on the ship channel to different industries are all absolute distances applies to the trackage operated by the Port Terminal Railroad Association. The cost shown on our Exhibits A-192 and A-193 is only the cost from the interchange point in making this. Weatherford, Crump's location on this map, Exhibit A-121, is about opposite the letter T, under T. & N. O. Railroad. A car of cotton brought into Houston by the International, Great Northern, delivered at the Percival Yard at Circle 5, destined to Weatherford, Crump's plant, would be delivered to us at Booth Yard. They would run through the [fol. 851] industrial section and deliver it to us (R. 3975). If another car of cotton were brought in by the International, Great Northern, delivered to Warehouse 7 or 8, opposite Weatherford Plant, the same service would be performed. In the inbound movement to Sprunt's Plant, or the Ship Channel Compress, I could not say wh-ther those cars may be placed without classifying them as to the tracks they go on. In connection with the handling through Congress Street Yard of the International Great Northern cars to the Percival yard, I wish to correct my statement that they move direct from the Percival Yard. They handle it in Congress Street Yard. They move without re-classification to the ship channel or Booth Yard (R. 3976). I got that information from Mr. Booth just now.

Mr. Booth: I did not say that.

The Witness: I understood that Mr. Brown testified to that effect.

Mr. Booth: I told Mr. Drake I did not think there was any movement direct from Percival Yard to Booth Yard. I did not say that they were classified at the Congress Street Yard (R. 3977). It would move through Congress Street Yards even if classification did take place in Percival and South yards.

WITNESS E. A. O'DONNELL

I am Superintendent of the Terminals, Southern Pacific, Houston, Texas. My testimony will be with reference to the handling at the platform (R. 3978). The necessity for handling from the mixed platform is to consolidate small lots of cotton in order to handle them to the Compress. I made a study for the month of November, 1925 of the cost of handling at the mixed platform. During that month we handled at the mixed platform at Houston 42,384 bales of cotton at an expense of $1,487.15, or 3.5¢ per bale. That involved only the handling over mixed platform. It includes only the labor and clerical expense, insofar as it relates to the actual work on the mixed platform. The labor charged in the month for that traffic was $1,225.40. The clerical hire was $261.75 on the platform, a total of $1,487.15 [fol. 852] (R. 3979). There is other clerical expense at other places; all of the records are maintained at the agent's office, and I made no attempt to extract that expense from the agent's rules. There is an average detension of one day per car, and that would be $1.00 per car, and reduced to a per bale cost would be 2.2¢ per bale, making a total cost of 5.7¢ per bale. I have not included in this study the capital investment and maintenance of the mixed platform, the capital investment and maintenance of the track serving the mixed platform, and the capital investment and maintenance in tools and appliances used in the work there (R. 3980), and records and stationery, fire protection, insurance, police protection, lights, telephone, ice, and supervision. If those items were included, the cost would be somewhat increased. The service of getting a car of cotton to the mixed platform is three times as great as handling the car direct to a compress from the classification yard. Taking two cars, one going direct to

the facility and another to the mixed platform and later to a facility, there would be three times as much switching involved in handling the car to the Compress via the mixed platform. The cost would be practically the same in getting the car to the mixed platform and the other car to the industry (R. 3981). We have a duplication of the costs in returning to the classification yard, and another duplication of it going from the classification again to the Compress. We have the additional cost of handling at the mixed platform plus the cost of switching the car back from the platform after we have consolidated to the classification yard, and from the classification yard to the industry. I believe the International & Great Northern, and probably the Belt also handle cotton to the mixed platform. I imagine that their operations in a general way are about the same as ours (R. 3982).

Cross-examination:

A car of cotton that had cotton in it for the Houston Compress Company, for the Weld-Neville, Alexander, Sprunt, and McFadden, all in one car, would be sent to the [fol. 853] mixed platform, unloaded there, sorted out, and all the cotton for an individual facility loaded in one car. Ordinarily we would have a carload at the mixed platform going to these respective facilities; in the busiest part of the season, we have a number of cars going to each one. In the dull season, we might not have a complete carload. The average for the year is not much under the peak movement. The average is 38 bales per car for the whole year, and it was 45 bales per car in November (R. 3983). We do not go to the ship channel. We would interchange with the Port Terminal Railroad Association, or the International Great Northern. I do not know whether any part of our costs to the mixed platform is paid by the shipper in addition to the freight rate (R. 3984). Taking a car originating at Dallas, consigned on through Bill of Lading to shipside and moving direct from Dallas to the ship's berth, the cost of moving such a car to ship's berth would be considerably less than the cost of moving a car from Dallas to the mixed platform and there sorting it out and taking it down to one of the facilities at Houston. All mixed car-

loads of cotton go to the mixed platform regardless of whether they are for export or otherwise (R. 8985). I am not considering the matter of per diem at all; I am considering only straight switching. It would make no difference so far as switching cost is concerned whether it went for export or where it went. Some of the cotton going to the mixed platform, flat cotton, but the major portion is compressed. I could not estimate the proportionate amount; but the fact that the average bales per car amounts to 38 at the end of the year would indicate that there is a pretty heavy percentage of compressed cotton (R. 3986). The cotton coming from the nearby points would come in flat unless [fol. 854] it passed a compress. It would have to move to the mixed platform if it came in in mixed lots. We have cotton at the mixed platform that goes to shipside from there; I could not say what the proportion is. It do not know whether it is on through bill of lading or not (R. 3987).

Witness C. C. P. Rausch

I am assistant Freight Traffic Manager of the Missouri Pacific Railroad with headquaters at St. Louis. I have been connected with the Company for over 30 years, all of my experience being in the traffic department. I represent the lines of our system north of New Orleans, north of Lake Charles, Louisiana, and north of Texarkana, which is the Missouri, Pacific Railroad proper.

It is our understanding specifically that there is only involved in this proceeding the matter of how the rates to the ports shall be adjusted whether one rate or more than one rate, what modification is necessary to bring this about, the interior situation and what modification in 11965 is necessary to comply with the Commission's final wishes, suggestions or orders. The rates on cotton in one form or another from Arkansas and Louisiana points to New Orleans and related points have been before the Commission on eight or nine different occasions within the past eight or nine years, or substantially once a year (R. 3989). Throughout these vicissitudes we have faithfully attempted to carry out the Commission's orders, except as we are

now presented with what seems to be a non-workable plan, and therefore a modification (R. 3990). As to the plan of the rates to the ports, our thought is that there might consistently be a uniform difference, so far as practicable, because uniformity is highly desirable, and at the present time this is 5¢ per 100 pounds export over depot delivery at [fol. 855] all ports, South Atlantic as well as Gulf ports (R. 3991). On page 13 of Docket 11965 in discussing the relationship of rates from Arkansas and Memphis, the Commission criticized us for carrying a single rate local, domestic and export to New Orleans and indicates that the *curs* is to make the export 5 cents over the domestic rate. They said "There is no justification for the identity of the domestic and export cotton rates to New Orleans." This 5 cents per 100 lbs. additional charge is now included in the total rate and is covered additionally in W. P. Emerson's Tariff 4-N, I. C. C. 105, naming all demurrage, storage, warehouse, and handling charges at New Orleans between cars, storage, and shipside, and in I. & S. 1293, 61 I. C. C. 379, the Commission found that generally the handling charges were below the actual costs to the carriers of performing the service. This thought of the uniform 5 cents difference is very largely predicated on our individual situation, from Arkansas producing territory, including our Mississippi River cities, Memphis and Helena, to New Orleans, and sub-ports, and because we understand the present arrangement on the foregoing basis, it is generally [fol. 856] satisfactory to the (R. 3992) Arkansas people, including Memphis as well as New Orleans. At least, we know of no views to the contrary. It fits in from points immediately West of the Mississippi River with the rate adjustment from points immediately East of the Mississippi River, and we compete most actively for this competitive traffic, having particularly in mind Memphis and Helena to New Orleans.

Considering our heavy investment in terminals at Memphis, Helena and New Orleans, we should not be deprived of handling all the cotton traffic there is, and which revenues add just so much to the total. The free cotton at Memphis runs between 140,000 and 150,000 bales per year, and at Helena about 30,000 bales per year. Any other arrange-

ment, considering the Commission's expression on page 167 of the report in 100 I. C. C. 159, that the rates be so readjusted as to preserve existing revenues would be unsatisfactory from every point of view.

We would understand that the level of the rates is not in issue in these proceedings, at least not any general readjustment or disturbance at this time, insofar as we are concerned, and as near as we are able to gather from conferences and expressions which the shippers and receivers on our line — they are of the same mind. My Exhibit A-194 shows the cotton traffic on the Missouri Pacific Railroad Company is important; it shows the cotton traffic on the Missouri Pacific Railroad Company for the calendar year 1921 to 1925, the number of tons, percentage of total, revenue and percentage of total.

In order to show some bearing on the fluctuation of this traffic there is indicated on the exhibit the cotton production in bales, first in Arkansas, second in the United States, for the same years, taken from the authoritative sources indicated thereon.

Arkansas is shown because it is typical and there is practically little production in Missouri, it being generally to the southeastern part of the state. While the Oklahoma production is considerable at the same time the Missouri [fol. 857] Pacific Railroad has little mileage in that state, it all being confined to the Northeastern portion and so far as Louisiana is concerned there is not a very large production, at least, not as large by any means as Arkansas. The Missouri Pacific statistics show number of tons; whereas the Department of Commerce statistics show the figures in bales. On the basis of 500 *tons* per bale it would convert the number of tons account the Missouri Pacific substantially as follows: for 1921, 1,480,000 bales. For 1925, 1,616,000 bales. For account of Arkansas all cotton ginned in 1925 was 1,593,029 bales, and for the United States as a whole—16,103,586 bales. With reference to the Commission's letter of January 27, 1926, requesting we supply certain information—we immediately replied to the Commission that we would look into the matter and in due course we started investigation with the following results: Nos. 1 and 2, Number of bales of cotton handled through compress last three years. I understand the compresses

have compiled this information per Exhibit A-48, and Mr. J. K. Moore's Exhibit A-136, and A-137, A-138 A-139 and A-140. No. 3. The rate for the service of pressing. On our line in Arkansas, Oklahoma and Louisiana is 18 cents per 100 pounds, the same as authorized by tariff publication. No. 4—The method used in arriving at weights. Generally inbound shipments are handled on estimated weights of 500 or 535 pounds. Outbound shipments, including transit cotton, and concentrated cotton, final settlements are made on shippers' bill of lading or compress outturn weight which is the actual weight and generally is in excess of the foregoing inbound estimated weight. No. 5. Investigation by carriers as to cost of compression. I cannot find we have made any. No. 6. Actual cost per bale incurred by compressors. I understood the compress people have indicated this in Exhibit A-48. No. 7. Names of persons, firsm or corporations connected with compresses. Have no specific information. No. 8. Schedule of tariff charges of compress. I understand the compresses have supplied this information in J. K. Moore's Exhibit No. A-49. On August 12th, 1925, Agent Leland of the Southwestern Freight Bureau, petitioned the Commission for modification of order in I. C. C. 11965, 77 I. C. C. 388. This [fol. 858] modification of order was requested so as to permit the readjustment of the rates then in effect to comply with the order and meet the conditions laid down by the Commission in I C. C. Docket 14940, 100 I. C. C. 159, pointing out that the Commission found in Docket 14940 that the rates on cotton to Houston and Galveston for export should be made higher than the domestic rates by an amount equal to the wharfage. In bringing this revision about the Commission's findings were not to be construed as authorizing the carriers to increase their present revenues, rather the rates, should be so readjusted as to preserve existing revenues and finally the Commission suggested no change in the rates through ports other than the Texas ports. That we understood practically all the cotton moving from Arkansas and Louisiana to the Texas ports is export. Therefore in order to preserve the carriers' revenue it appeared that the order should be complied with by increasing the depot rate to a basis of 2 cents less than the rate to shipside delivery. However under the Com-

mission's order in I. C. C. 11965, 85 I. C. C. 388, a relationship between the rates from Arkansas points to Texas ports versus New Orleans on cotton for both depot rate and ship-side delivery was prescribed. The rates to the Texas ports for depot delivery, cannot therefore, be changed under the outstanding order in 11965 without making corresponding changes in the rate to New Orleans depot delivery. My Exhibit A-195 is a photostatic reproduction of a part of my line, and shows all of the Arkansas lines on which I have circled certain points which are representatice of the Cotton Belt, and on which some comments will be made in further exhibits offered. In Docket 11965, 77 I. C. C. 381, the Commission issued an order prescribing a relationship between the rates on cotton compressed in transit at carrier's expense from points in Arkansas to Galveston, Houston, Texas City versus New Orleans. On page 400 of the report the Commission state that the rates on cotton from points in Arkansas to Galveston should bear a reasonable relationship to the rates from the same point of origin to New Orleans; that this may be accomplished by making the rates to Galveston on basis of differentials over or under the rate to New Orleans; that where the [fol. 859] difference to Galveston is more or less than to New Orleans from the same point, a differential over or under the contemporaneous rate to New Orleans should apply as maximum to Galveston according as the distance to Galveston is greater or less than to New Orleans, viz:

Distance	Differential
Not over 25 miles	None
26 miles and not over 50	2 cents
51 miles and not over 75	3 cents
76 miles and not over 100	4 cents
101 miles and over	5 cents

On page 401 of the report they state that this basis of rates from Arkansas shall apply on cotton compressed in transit; that in computing distances from Arkansas points, the shortest possible route, embracing as a maximum the lines or parts of lines of not more than 3 carriers via existing connections and interchanges of carload traffic should be used, and lines under common ownership shall be considered as single lines; that the rates determined on this basis

should apply also to Houston and Texas City as maximum reasonable rate. My exhibit A-196 shows how we were to the best of our ability able to work out the foregoing. The exhibit shows the rates from representative points on the Missouri Pacific in Arkansas to Galveston versus New Orleans, together with the mileage and routes. For example, the most northerly point in Arkansas selected as representative is Knobel, distance to Galveston 651 miles, distance to New Orleans 495 miles, or Galveston 156 miles in excess of that to New Orleans. The differential prescribed by the Commission and within 101 miles, with the addition of the words " and over," which differential is indicated as 5 cents and the rates have been so adjusted. The New Orleans domestic rate is 87 cents, export 92 cents, Galveston 5 cents higher or 92 cents and 97 cents respec- [fol. 860] tively. From Little Rock, Arkansas, in the center of the state, the distance to Galveston is 506 miles, and to New Orleans 439 miles, Galveston 67 miles in excess of New Orleans. The differential table fixed by the Commission calls for a difference of 3 cents, Galveston over New Orleans, and this is actually reflected in the rate, and the rate to New Orleans, domestic 87 cents, export 92 cents and Galveston domestic 90 cents, export 95 cents. As a further example; Hope, Arkansas in the southwestern portion of the state, the distance to Galveston 392 miles and to New Orleans 380 miles, or Galveston 12 miles greater than to New Orleans. According to the Commission's differential table this calls for no difference in the rate and as a matter of fact, the rates are identically the same to both New Orleans and Galveston, 87 cents domestic and 92 cents export. From Eudora, Arkansas, a point in the extreme Southeastern part of the state, the distance to Galveston is 418 miles and to New Orleans 300 miles, difference Galveston in excess of New Orleans 118 miles. According to the Commission's order this difference to Galveston should be 5 cents in excess of New Orleans, and the rates are so adjusted. New Orleans domestic 76.5, export 81.5 cents, Galveston 81.5 cents and 86.5 cents respectively. My Exhibit A-197 shows the rates on cotton, carriers' privilege, domestic and export to Galveston versus New Orleans, from Memphis and typical intermediate points and from Helena and typical intermediate points in Arkansas and Louisi-

ana. For 4 months' period October to December, both inclusive 1925, from Memphis, Tenn. for export there was 1,093 bales of cotton from Missouri Pacific Origins forwarded to New Orleans—Domestic 391 bales—total 1,484 bales. From Helena, export, 5,691 bales, domestic 1,080 bales—total 6,771 bales. From points intermediate to Memphis, and Helena, in Arkansas, 6,003 export, Domestic, 5,988, total 14,491 bales. In Louisiana, export 1,493, domestic 6,948 bales total 62,441 bales, or a total at intermediate Arkansas and Louisiana points of export 6,996 [fol. 861] bales, domestic 66,936 bales total 74,932 bales. for the same period to New Orleans from other Arkansas points the movement was only as follows: export 24,667 bales, domestic 15,931 bales, total 40,958 bales; and from other Louisiana points, export none, domestic 281, total 281 bales, with the total from other Arkansas and Louisiana points, than those intermediate to Memphis and Helena, export 24,667 bales, domestic 16,212 bales, total 41,239 bales, showing that the Memphis traffic is of considerable importance and this is much more so with reference to Helena traffic and likewise the intermediate territory involved is of great magnitude, relatively speaking, so that we feel that due regard should be had in any equalization of these rates or in increase or reductions in these rates from the intermediate Arkansas and Louisiana points and from Memphis and Helena particularly account of our large financial interest, facilities, etc., at Memphis, at Helena, and at New Orleans. For many years the rates on cotton for example from Memphis, Tenn., to New Orleans, Louisiana, were on a very low basis, in fact everything considered they were subnormal and such rates violated the long and short haul clause of the Fourth Section of the Act to Regulate Commerce. This latter feature was gone into in Commission's Fourth Section order 7542 in the Mississippi Valley, the readjustment of the rates were necessary under which the carriers proposed some increases. For example from Memphis to New Orleans on cotton, carriers privilege the 59 cent rate was proposed at 90 cents and contemporaneously to this it was necessary to revise the rates from Little Rock and other Arkansas points, for example—the rate from Little Rock to New Orleans was 90.5 and the carriers proposed a closer relationship with Memphis of $1.015 per 100

pounds. This readjustment of rates also extended to the east and the rates were all suspended and gone into very thoroughly by the Commission in I. & S. 1431, decided June 28th, 1922, 69, I. C. C. 318. Though the Commission did [fol. 862] not allow the full increases as proposed by the carriers, they indicated that the Memphis-New Orleans Depot delivery rate should be 5 cents less than that proposed, or 85 cents and set the figure from Little Rock at 96.5 cents. The 10 per cent reduction of July 1, 1922, made these figures respectively from Memphis to New Orleans 76.5 and from Little Rock 87 cents. The New Orleans export rates were made 5 cents higher than the foregoing, or from Memphis 81.5 cents and from Little Rock 92 cents per 100 pounds. With the foregoing rates fixed Helena on the Mississippi River was changed with relation to Memphis, and in fact all Arkansas points were simultaneously checked out to correspond to the changes from the river crossings acocrdingly. The Commission has already dealt with this matter and fixed a direct relationship, Mississippi River Crossings, Memphis and South, versus Arkansas to New Orleans. If the Commission does not see fit to adopt the suggestions of the carriers, as to modification of docket 11965, then we offer the following suggestions: First, order readjustment of the rates from Memphis and Helena to New Orleans via all lines east and west of the Mississippi River, that is, if it is to be a one rate plan, or Second: Give the Missouri Pacific Railroad necessary Fourth section relief so that the present adjustment Memphis and Helena to New Orleans will continue undisturbed via the west side lines contemporaneously with what the Commission finds should be done to accomplish the desired end west of the Mississippi River, that is again if it is to be a one rate plan all around.

Cross-examination:

If the Fourth Section relief be not granted, we are here asking that the Commission modify the equalization. We do not want to destroy the equalization which the Com-

mission found was proper between the Texas ports and New Orleans in Docket 11,965. Under our first plan, there would [fol. 863] be absolutely no change in the export rate from Arkansas to Texas ports versus New Orleans, and where they are equalized now they would be equalized in the future. There is not much cotton which the Galveston merchants would buy at a 3 cent disadvantage in competing with the New Orleans merchant who could buy there under the local rate. I think some of the figures in the record show something like 30,000 bales, which is a very small amount as compared with four million or five million bales (R. 4007). I do not know the amount of cotton for the season just past that has moved from Arkansas and Mississippi to the Texas ports. I have not followed the movement. My Exhibits do not include the movement of cotton via the International, Great Northern and the Gulf Coast lines. They are a part of what is designated as the Missouri, Pacific Lines; but I specifically refer here to the Missouri Pacific Railroad in Exhibit A-194. So far as my line is concerned, where the service is not materially different today, we have no preference as between hauling our cotton to the Texas ports or to New Orleans. As a general proposition, we have Fourth Section relief on other commodities from Helena, Memphis to New Orleans via our Road through Alexandria, Louisiana (R. 4009). Should Fourth Section relief be granted to us on cotton from Memphis and Helena from New Orleans, permitting us to meet the rates operated by the East Side Line, and if the export rate from Eastern Arkansas is reduced to a basis lower than Memphis, it seems to me that there would be more or less difficulty in putting in a one-rate plan from Arkansas to New Orleans, because the Commission has gone into the matter of rates generally on practically every class and commodity in the Mississippi Valley, East of the River versus West, and in innumerable cases has practically said that the territory West of the Mississippi River is higher rated territory. There is a lower level of rates in the Mississippi Valley. It will be a very peculiar thing to have

a lower rate from Arkansas than from Memphis (R. 4010). We are not concerned with the carriers East of the River, if they happen to have a lower rate, but we have to have a [fol. 864] consistent rate adjustment. The rate from Memphis via barge line to New Orleans is about 11½¢ per 100 pounds lower than the rate all-rail. We have no movement of free cotton from Memphis to New Orleans. The Memphis business we handle would be Pacific Coast, Eastern Seaboard, Massachusetts Cities, and the Canadian Points, North Carolina, South Carolina, and the Mississippi Valley (R. 4011). We take the Memphis traffic through St. Louis, or through Cairo. I do not think we would take it through New Orleans. I think we had a very small movement from Memphis through New Orleans. I think I did find a small movement through New Orleans to Southeastern points, very small, but it was from Arkansas. We operate through joint rate on cotton from Arkansas to the Southeast and to the New England Mills via the all-rail route. I think those rates are lower than the available rates through New Orleans to the same points from Arkansas. Generally they are considerably lower, but there is a fixed relationship in the rate from Arkansas to the Southeastern points to Carolina. At one time I presume they were full combinations (R. 4012) on Memphis. I do not know of a fixed relationship between the through rates established on cotton from points in Arkansas to the points in the Southwest applied via Memphis as contrasted with the available rates via New Orleans. There is practically true of Louisiana too. There is a fixed relation from those several states, including Southeast and Eastern Oklahoma, to any other Canadian and Eastern point and all of the Southeast. There is always a relation in the rate from every point in Arkansas to Memphis versus St. Louis; from Louisiana to Memphis versus St. Louis. There is a fixed relationship in the rates from every point, Little Rock and Alexandria being typical to Boston. If you change the rate from Little Rock to St. Louis and readjust it 5 cents, Memphis wants the same change, New Orleans wants the same change, and [fol. 865] Alexandria and Monroe want the same change to New Orleans affecting this movement; wants that same change to St. Louis and all Southeastern points, wants it put down also (R. 4013). We operated a one-rate plan

[fol. 866] from New Orleans when there was a two-rate plan from New Orleans, and the Commission criticised us and said we had to put in the two-rate plan. If we increase our domestic rate on cotton from Arkansas to New Orleans 3¢ per 100 pounds, in order to get a one-rate plan, we would have to get the Interstate Commerce Commission to make the same increase to Memphis. We have to meet the Arkansas rate. The rate is 76½ cents from intermediate territory. There is practically more cotton goes to New Orleans from the Mississippi River section than from all the balance of Arkansas put together. We blanketed the 76½¢ rate south of Memphis. I do not know what the local consumption of cotton in New Orleans amounts to annually. We could not very well make the rate on cotton from that section of Arkansas 86½¢ and then when it comes to the export rate, make it 5 cents more. We could increase our local rates on cotton moving to New Orleans 3 cents per 100 pounds without disturbing anybody else's domestic rates, if the Interstate Commerce Commission so ordered, but not otherwise because we would immediately get in jeopardy with everything else and the export rate. If we did increase the domestic rate from Arkansas to New Orleans, that would increase the spread New Orleans over Memphis to the Southeast. It would increase the spread as against the rates to St. Louis (R. 4015). I do not consider the fact that we may have today a 15¢ spread over Memphis any reason why a spread should go the 18¢. I do not see why we should arbitrarily increase the spread in any of our rates to St. Louis, Memphis, New Orleans, or even to Houston or Galveston, and the only reason we have made these suggestions is because it seems the easiest way out of the dilemma and would cause the least disturbance. So far as the export situation via all the ports, there absolutely would not be any disturbance. I do not know anything about the [fol. 867] situation at the Texas ports, but it seems to me that if there is any peculiar situation that needs peculiar treatment, it ought to receive that treatment. It would be almost impossible to try to adjust the Memphis rates unless the Illinois Central would increase their rates, and they would hardly increase their New Orleans rate without increasing them over to the Southeast and so on. They could change the Memphis rate without changing the rate to the

entire Memphis group in the Mississippi Valley, I can not see why the Illinois Central could not increase the rates we will say from Memphis to New Orleans, (R. 4016) plus the 2 cents, or 3 cents, whatever it may be, and change it all the way around. That would require a change from all other points in the Memphis group. We have a great many troubles other than that involved here, in Houston and Galveston versus New Orleans. We have all of this Mississippi River situation to contend with and are trying to iron it out with our shippers. We simply put it up to the Commission because there is no better authority than the Commission. They have gone into these things. When the Commission fixed the 5 cent relation between the Texas ports and New Orleans on export traffic, it was a natural sequence that the domestic rate carried the same relation. We have a substantial movement upon both local and export rates to New Orleans from points in Arkansas (R. 4018). The way we operate now at New Orleans, there is no transit privilege, and transit privileges are more or less complicated and expensive. I do not see why things should be more complicated than it is. I do not question the authority of Mr. Turner and Mr. Bennett here to speak for the Arkansas shippers (R. 4019).

WITNESS J. A. LYNCH

I am General Freight Agent of the Texas and Pacific [fol. 868] Railway Company with headquarters at Dallas, Texas.

(Mr. Reed: Mr. Lynch's qualifications are admitted.)

Exhibit A-198 is a one-page statement showing the movement of cotton through concentration points involving indirect or back-haul service at points on the Texas & Pacific Railway during the season beginning August 1, 1925. Exhibit A-199 is a four-page statement of the rates on cotton with carriers' cost of compression from representative points in Louisiana, Arkansas, Oklahoma and Texas to New Orleans, Louisiana; also to Houston and Galveston, Texas, both domestic and shipside for export. A-200 is a one-page statement showing the rates on cotton with carriers'

cost of compression from representative points in Louisiana, Texas and Oklahoma to New Orleans, Vicksburg, [fol. 869] Memphis and St. Louis, as applicable on domestic traffic. This statement shows the rates as in effect in September, 1917 and at the present time. It is to indicate the relative adjustment and in many instances the relationship in the domestic rates as between the Mississippi River crossing points names; also as to the points of origin. The weight on which the carriers assessed freight charges have been used by the Texas & Pacific in making settlement for the compress charges. The testimony I offer relates to rates on cotton from points in the various states involved to New Orleans, Louisiana. The rate situation at New Orleans is decid-ly different from the situation at the Texas ports. The rates to New Orleans have been before the Interstate Commerce Commission in so many cases, and apparently it is unnecessary to give full outline of the situation. The rates from Texas to New Orleans were before the Commission in the year of 1898 in the complaint of the Dallas Freight Bureau recorded in 8, I. C. C. 33. This complaint related to the domestic rate as applicable from Dallas to New Orleans of 75 cents, and at that time it was shown that the rate to New Orleans was based on a differential over the rates to Galveston. The 75 cent rate being 10 cents above the corresponding rate from Texas common points Territory to Galveston of 65 cents. It was also found by the Interstate Commerce Commission that the Texas Commission having reduced the rate to Galveston to 56 cents resulted in the rate to New Orleans being reduced to 66 cents. When the rate to Galveston was reduced to 51 cents, the rate to New Orleans was reduced to 61 cents, and again in 1917 when the carriers operating to Texas ports decided to increase the export rate to the Texas ports, by adding what was said to be the approximate cost of handling the cotton from the railroad depot or premises to the docks at Galveston, of 3 cents per 100 [fol. 870] pounds the rates to New Orleans were also increased not only on export traffic, but also on domestic traffic. This increase to New Orleans was published in Agent Leland's I. C. C. 1175, effective September 18, 1917, and as there was a relationship in the rates to New Orleans

proper with the rates to Memphis, St. Louis and Vicksburg —there was a corresponding increase to the latter points. A portion of the increase to Memphis in connection with movement to southeast and points beyond was published effective on September 18, 1917 and on October 18th, 1917 the rates to Memphis, St. Louis and Vicksburg were made to fully reflect the increase to New Orleans and Galveston of 3 cents. In the complaint of the Dallas Freight Bureau, the Commission did not disturb the rate of 75 cents, as it found that it was related to the domestic rate to Galveston which latter rate was under the control of the Texas Commission and due to its applying to the common point territory, the Commission apparently felt that that relationship would take care of the situation in a proper manner. There is, and has been a relationship in the rates to New Orleans and points in Arkansas as compared with Memphis, Tenn., Helena, Arkansas and other points in Tennessee and Mississippi via east side routes. This however has been stated by the witness for the Missouri Pacific Railroad. It is the position of the Texas & Pacific Railway, that while this Commission might properly if it so desired, establish a one rate plan to Texas ports, insofar as the rates to New Orleans on both domestic and export traffic but more particularly domestic traffic are concerned, there is a different situation, and we desire to urge upon the Commission the necessity of refraining from prescribing a hard and fast rule that would result in the establishment of rates to New Orleans under a method which does not take into consideration the many conflicting angles as prevelant at that point. That is the relationship of the domestic rate to New Orleans, not only from points in Texas but also from points in Arkansas and Louisiana with the rates in effect to Memphis, Tenn., Vicksburg, Mississippi, St. Louis, Missouri, as well as to the Texas ports. The rate to Memphis [fol. 871] from points in Louisiana as well as to New Orleans from such points were established following the Commission's decision in the case of the Memphis Freight Bureau, Docket 6390, 39 I. C. C. 224, and were gone into by the Commission in connection with I. & S. Docket 955, 46, I. C. C. 451, as well as various other cases, such as the complaint of W. D. Haas & Company, Docket 9946, 52 I. C. C. 527 I. & C. Docket 1431, 69 I. C. C. 318; I. & S. 1641, 74

I. C. C. 580: I. C. C. Docket 11765, 77, I. C. C. 388, and I. & S., 1858, 85 I. C. C. 5. There is a further situation at Shreveport, Louisiana which is known as one of the key points for rates on cotton from Louisiana points to gulf ports and other destinations. The rate from Shreveport to New Orleans as was found by the Commission in I. & S. 955, was held down by the rates in effect to the gulf ports from Texarkana and other Texas points. Exhibit A-199 is a four page statement showing the rates in effect, domestic and shipside to the ports of New Orleans, Houston and Galveston from representative points in Louisiana, Arkansas, Oklahoma and Texas, clearly indicating the fact, that insofar as the City of New Orleans is concerned there is a situation which differs materially from that in effect to the Texas ports. Insofar as the rates from Louisiana points to New Orleans proper are concerned, primarily these rates are of intrastate character, and subject to the jurisdiction of the Louisiana Public Service Commission. The rates from Shreveport, Monroe, Ruston and other points on the Vicksburg-Shreveport and Pacific as well as points on the Louisiana and Arkansas Railroad are applicable due to the location of the said lines, via interstate routes through Vicksburg and Natchez, Mississippi, and in view of the recent order of the Interstate Commerce Commission which ressulted in the Vicksburg-Shreveport and Pacific Railway being taken over by the Illinois Central System those lines will find it necessary to continue to apply via the interstate routes the same rates as are applicable via the intra-state routes to New [fol. 872] Orleans proper. It has been found that this situation has complicated to some extent the question of publishing rates between interior points in Louisiana and New Orleans. While there is a difference of 5 cents as between the depot delivery or domestic rate and shipside or export rates from the Louisiana and Arkansas points to New Orleans as well as to the Texas ports, when you get into Oklahoma the situation differs to the extent that although there is a difference of 5 cents to the Texas ports as between the domestic and shipside rate to New Orleans there is no relationship as between the domestic and shipside export rate from the fact that the domestic rate from Oklahoma to New Orleans for export which are generally speaking,

to the domestic rate to the Texas ports, but are related to the rates in effect to other Mississippi rover crossings, such as Vicksburg, Memphis and St. Louis. Insofar as the export rates from Oklahoma to New Orleans are concerned, they are made with relation to the export rates to the Texas ports. This situation is different materially, therefore, at New Orleans and at the Texas ports, and results in rates to New Orleans for export which are, generally speaking, on a lower basis than the domestic rates, or in no event materially higher than the domestic rate. In this situation as I understand it, there is no complaint as between the interior concentrators and the port concentrators, in that neither has any advantage over the other, and accordingly the Commission should not issue any orders that would disturb, first, the relationship in the domestic rates as between New Orleans and the other Mississippi River crossings, or second, that would disturb the relationship in the export rates as between New Orleans and the Texas ports, the carriers being permitted to maintain the same rates to New Orleans as to the Texas ports, on export or shipside traffic, where they find same proper. From the Texas points of origin there is a relationship in the domestic rates to New Orleans with the rates to Galveston and other Texas ports. There is further relationship in the rates on export traffic with the export rate to Texas ports from points in Texas on the Texas & Pacific Railway, the Weatherford [fol. 873] Mineral Wells & Northwestern Railway and certain other lines. As to the other points in Texas generally, the domestic rates to New Orleans are also applicable on export traffic and are in excess of both the domestic and export rate to the Texas ports. Exhibit A-200 shows the domestic rates as in effect in 1917 and at the present time from points in Louisiana from points in Texas and from points in Oklahoma to the Mississippi River Crossing indicating the relationship then in effect—that is, in 1917—was approximately the same relationship as exists today. My only thought in this case is to urge upon the Commission the necessity of considering insofar as New Orleans is concerned from many angles that the carriers find existing at that port, to not issue any hard and fast rules that will result in placing the port of New Orleans and the lines serving New Orleans out of the running. In connec-

tion with Exhibit A-198, it was put in, in connection with the showing contained in Exhibit A-13, which indicates in a practical manner how the back haul service as performed by the Texas & Pacific Railway actually takes place and not to indicate from tariff reproduction, some extraordinary situation which, as a practical matter would hardly ever take place.

Cross-examination:

Exhibit A-198 indicates that if the traffic moved in direct line of transit, the flat cotton, there would be an increase in the flat cotton miles. The rates from Dallas, Texas to New Orleans were originally based 10 cents over Galveston, and Vicksburg, Memphis, and St. Louis, were all placed on the same basis. The Vicksburg is the same rate as the Memphis and St. Louis rate. There is a relationship between the Vicksburg rates and the New Orleans rates, in that, the Vicksburg rate is higher than the New Orleans rate, from Dallas. You will have to take it as group situation rather than as an individual situation, as may be indicated on Exhibit A-200 (R. 4031). The rate to New Orleans and to Vicksburg applies generally from the entire common point territory. Therefore, as an entire group, it would no doubt show a different situation. Both rates apply from common point territory. Of course, there is this difference; that to New Orleans, where the Houston combination [fol. 874] made less, there was a lower rate than the common point rate. The Vicksburg rate as I have stated, is on the same level as the Memphis rate, and Memphis, St. Louis, and Vicksburg had that relationship, so that when the increase was made to Galveston in 1917, the same increase was made to New Orleans and immediately thereafter the same increase in cents per 100 pounds, was made to Vicksburg, Menphis and St. Louis. I do not see any particular need at all for the rate to Vicksburg, because I have never heard of traffic moving to Vicksburg proper. There are proportional rates, which are different from these rates I have shown, to Vicksburg applicable to southeastern traffic (R. 4032). As to the reason for a relationship between the rates from Texas to St. Louis on cotton versus the rates from Texas to New Orleans, it seems to be the general basis for practically all rates I know of to have

a relationship as between principal gateways, or consuming point, and when one rate goes up there is a demand that the other rate go up, and when it goes down there is a demand that the others go down. I would make the same answer with reference to Memphis. It is to maintain the parity that has existed for many years. In so far as Louisiana is concerned, we have had a definite order from the Commission, or a definite opinion from the Commission, that required the maintenance of a relationship between the rate as between Louisiana points of origin and Memphis as compared to New Orleans (R. 4033). I refer to domestic rates. There are through rates from many points in Louisiana to the Southeast. I do not know that there are through rates to all points. There is a basis for making a combination rate which is less than the actual combination of intermediates. This relationship was found proper by the Commission as to Louisiana and is based on their decision. I do not know about the Arkansas points. I have made no [fol. 875] investigation in regard to any competitive feature between Memphis and St. Louis on the one hand, and New Orleans on the other, that requires the fixing of a definite relationship between the domestic rate from points in Louisiana. But Memphis has always been a gateway, and a good deal of cotton has moved to Memphis. Apparently [fol. 876] the Memphis merchants were desirous of getting some cotton from Louisiana points when they brought complaint covered by Docket (R. 4034) 6390. I understand it is the intention, not only of the Louisiana Line, but of *the* both the Southeastern Lines and the Southwestern Line, to establish through rates on cotton to the South-east; I do not know whether necessarily via the crossing at New Orleans, but via all crossings, so far as practicable, to get away from the basis of making the combination and resulting in set rate. I could not say how far those negotiations have progressed. If one rate on cotton is established, from Louisiana to New Orleans in this case, and the domestic rates to New Orleans are increased, Texas & Pacific, no doubt, could maintain through rates to the Southeastern points without refer*e*rence to the volume of the rate to New Orleans, but there are a great many complications and other lines to consider, and I do not know just what the rate would be. (R. 4035) We could carry the present domestic

rate from points on our line to New Orleans as a proportional rate on traffic destined to the Southeast pending publication of a through joint rate. I do not know just how much trouble it would cause. We do not absorb the unloading on cotton consigned to New Orleans on a domestic bill of lading for industries to which cotton is shipped for delivery. Nor do we to cotton warehouses. In Louisiana all intrastate cotton rates have the same 12¢ penalty on flat movement as the interstate rate. I believe they are identical with the interstate rates (R. 4037). It is our intention to maintain the relationship Memphis versus New Orleans and all rates on a parity via all gateways to the extent of our ability, as controlled by the Fourth Section and the relief which the Commission will grant us. I refer to through traffic.

WITNESS W. H. STAKELUM

I am Assistant General Freight Agent of the Southern Pacific Lines in Louisiana, which position I have held for the last six years (R. 4028).

[fol. 877] Mr. Fulbright: The qualifications of Mr. Stakelum are admitted.

There is some difference in the New Orleans situation as compared with the Texas ports, and insofar as Oklahoma and the equalization territory from North Texas are concerned the rates fixed by the Commission on export traffic to the Texas ports will be the export rates to New Orleans. I mean that if the rate from North Texas to Texas ports is made 83 cents, this will make the total cost to shipside 85 cents, added to the 2 cents wharfage, the reduction of ½ cents per 100 pounds, or 2½ cents per bale, so that the new rate to New Orleans will be 85 cents, resulting in a reduction of 2½ cents per bale. If the Texas port rate is made 82.5 cents the New Orleans rate will be 84.5, a reduction of 5 cents per bale. If the new Texas rate is fixed at 83.5 cents there will be no change in the rate to New Orleans. The same is also true of Oklahoma, so that any reduction in the present export rate from Oklahoma to Texas ports will result in the same reduction to New

Orleans. Exhibit A-201 shows the movement of cotton to New Orleans and the disposition of same insofar as the carriers are concerned. Movement is from Arkansas, Louisiana, Missouri, Oklahoma and Texas reaching New Orleans, via the Gulf Coast Lines, Louisiana Railway & Navigation Company, Morgan's Louisiana & Texas Railway and S. S. Company (Southern Pacific Lines), Missouri Pacific, Texas & Pacific, and Illinois Central for season August 1st, 1924 to July 31st, 1925. The first page shows the export and through coastwise movement. The domestic movement to New Orleans is shown on upper part of page two, and the lower part of page two and page three shows the cotton concentrated after arrival. In connection with the domestic movement the word "deducted" and a line of figures following same will be noted. This represents the cotton concentrated at New Orleans so that the net total figures shown represent the cotton that consignees disposed of themselves. This totals 492,164 bales. If the Texas export rate is reduced 1.2 cents per 100 pounds, [fol. 878] or 2.5 per bale, the reduction to New Orleans on the export movement of 9,765 bales of through cotton plus 1,491 bales concentrated at the port—total 11,256 bales would be $281.40. On coastwise movement of 4,598 bales through cotton, plus 4,337 concentrated at the ports—total 9,835 bales the reduction would be $223.37—total of the two $504.77. My Exhibit A-202 is a compilation reducing the per car charges to a per bale basis covering the switching charges applicable at New Orleans on cotton from warehouses to different docks at New Orleans on a 65 bale car the switching charge ranges from 27.4 per bale to 10.77 cents per bale and on a 40 foot bale car the range is from 44.5 to 17.5 cents per bale. The average is 20.44 cents for a 65 bale car and 32.22 cents for a 40 bale car. After cars are switched there are additional charges of 5 cents per bale unloading, 3.75 per bale tollage—total, 8.75 cents per bale in order to effect shipside delivery. Exhibit A-203, page 1 shows the effect of continuing present export rates from Arkansas and advancing the domestic rates to the export basis; also cost of making shipside delivery from city front and back of city front warehouse, based on per car loading of 65 bales, 50 bales and 40 bales respectively. The only city front warehouse considered here in this exhibit

is the New Orleans Public Cotton Warehouses, all the other warehouses considered being located back of the city front. The spread in the domestic and export rates today from Arkansas is 25 cents per bale, so an increase in the revenue of $33,654.00 is shown based on the 134,616 bales of domestic cotton shown on page 2 of Exhibit A-201. The cost of making delivery of this number of bales to ship-side is also shown. New Orleans lines figures show that 50.7 per cent of the domestic cotton for this period was stored in city front warehouses and 49.3 per cent stored in back of city front warehouses. Applying these percentages to the total number of bales of 134,616 resulted in the segregation as shown. The Public Cotton Warehouse, the only city front warehouse considered takes the $7.00 switching charge so the $7.00 rate was used on the 50.3 per cent of the movement and the average switching charge [fol. 879] of $13.29 on the 49.7 per cent. This shows it will cost the carriers $32,696.64 on a 65 bale car $38,773.97 on a 50 bale car, and $44,636.24 on a 40 bale car as compared with a revenue increase of $33,654.00. Page two covers Louisiana cotton compiled on the same basis which shows cost of making delivery as $53,358.22 on a 65 bale car, $63,606.23 on a 50 bale car and $74,696.52 on a 40 bale car as compared with the revenue gain of $54,924.00. If the one rate plan is decided upon it is absolutely essential that the Louisiana State rates be dealt with simultaneously, either under the co-operative plan with the Louisiana Public Service Commission, or in the event of failure of the co-operative plan, by an order of the Interstate Commerce Commission, requiring the carriers to increase the Louisiana intrastate rate. If the Louisiana state rates are not increased, necessarily the situation will remain as it is now, and a one rate plan cannot be made effective at New Orleans. If the export rates on Louisiana cotton to New Orleans are reduced and there are no corresponding increases in the intrastate rates, the Louisiana carriers' revenues will not be preserved, which would be contrary to the expressed intention of the Commission if the one rate plan is decided upon. Page No. 3 of the exhibit is a recapitulation of pages one and two. This shows that on a total movement of 354,312 bales from Arkansas and Louisiana the carriers' gross gain in revenue would be $88,578.00,

while the cost of making shipside delivery of 65 bales cars would be $86,054.86; 50 bale cars $102,380.20; and 40 bale cars $119,332.76. This gives net gain of $2,523.14 on the 65 bale cars, but a loss of $13,702.20 on the 50 bale cars and a loss of $30,754.76 on the 40 bale cars. The calculations of this exhibit are based on no reduction in the export rate and a 5 cent increase in the domestic rates from Arkansas and Louisiana. If the exports rates are reduced .5 cents per 100 pounds or 2.5 cents per bale, and the domestic rates increased 4.5 cents per 100 pounds, or 22.5 cents [fol. 880] per bale, the carriers' increase in revenue of $88,578.00 will be reduced $8,857.80 or to $79,320.20. To this will be added the decrease in revenue on 50,778 bales of export shown on exhibit A-201 of $1,311.97. In other words for each .5 cents per 100 pounds reduction in rate, the revenue is reduced $10,169.77. Due to the relationship existing in the rates from these two states to Houston, Galveston and New Orleans, any reduction in the present export rates to the Texas ports will likewise force a similar reduction in the rates to New Orleans. If a domestic rate from Oklahoma was put on the export basis the increase would not average one cent per 100 pounds, but applying 1 cent per 100 pounds, or 5 cents per bale, increase against the domestic movement of 41,291 bales as shown in Exhibit A-201, the carriers' gain would be $2,064.55. Against this gain would be the cost of making shipside delivery and on a 65 bale car, computed on basis of Exhibit No. A-202, this cost would be $10,028.42. The situation at New Orleans if the one rate plan is established is bound to result in a loss in revenue. Traffic from the southwest to New Orleans moves on two classes of rates, namely export and domestic. The domestic rates from Louisiana and Arkansas are uniformly 5 cents per 100 pounds under the export. From Northeast Texas the export rate is 85.5 while the domestic rate is 96 cents. From the balance to common point territory both the domestic and export rates are 96 cents. From Oklahoma the domestic rates are an average of about 1 cent under the export rate. Domestic traffic is split about 50-50 between movements from back of the city front presses and city front presses at New Orleans. Where the movement is from back of city front presses the charges for getting the cotton to the steamship dock, based

on a 65 bale car, would be as follows: Switching charge of 4.1 per 100 pounds unloading charge after arrival at steamship dock of one cent per 100 pounds and tollage charge of .75 per 100 pounds, or a total of these three items of 5.85 cents per 100 pounds. On city front warehouses the unloading and tollage remain the same but the switch-
[fol. 881] ing cost is 2.15 cents per 100 pounds, or a total of 3.90 cents per 100 pounds. The average of the two costs is 4.88 cents per 100 pounds. The best that could result under the one rate plan to New Orleans would be an even break, and that would only apply to Arkansas and Louisiana cotton were the domestic rate 5 cents under the export rate. On Oklahoma cotton where the present domestic rates are only about 1 cent per 100 pounds under the export rate the loss would be 4.85 cents per 100 pounds from back of city front warehouses and 2.90 cents per 100 pounds from city front warehouses if the one rate established is the export rate. Even if the domestic rates are increased to the export basis it would result in a loss to the New Orleans carriers.

Cross-examination:

Shipments shown on page 1 of Exhibit No. A-201, moving under through bills of lading from points in Texas and points in Louisiana apparently to New England mills via New Orleans and the American Line would not be affected as to the rate by this case, unless the rate via the Texas Ports were advanced. If the rates via the Texas Ports were advanced, the rates via New Orleans would be advanced. Cotton concentrated at New Orleans and reshipped to the New England mills on which concentration was taken is shown on page 3 of Exhibit A-201; that is coastwise, a total of 6,474 bales, 2,137 from Louisiana and 4,337 from Texas (R. 4047). That all went coastwise after it was concentrated at New Orleans. (Exhibit A-202 shows a cost of switching cotton from the City Front Compresses to the shipside of 10.77 cents per bale, based upon a loading of 65 bales to the car. Page 1 of Exhibit A-203 shows 68,350 bales at 19.52 cents per bale. The foot note shows that to the 10.77 cents per bale must be added the 5¢ unloading at shipside, plus the tollage of 3.75 cents, which makes a total of 8.75. The 8.75 added to

the 10.77 gives the other figure. We do not absorb the unloading today out of our domestic rates to New Orleans on cotton. At New Orleans if we switch cotton to a warehouse, the cotton is unloaded by the consignee at his own expense. [fol. 882] Q. Neither do you absorb any wharfage? That is natural, because you have not any wharfage and the total of the two approximates almost 2 cents per hundred pounds?

A. The total approximates 1.75 cents, representing the terminal charges at New Orleans which we do not absorb out of the domestic rates (R. 4048). I do not know whether you could relate that to the 2 cent wharfage at the Texas ports which the Railroads do not absorb out of their domestic rate, because one is an unloading charge and the other is a tollage, and there is some difference between tollage and wharfage. We think that the through export rates at New Orleans and the Texas ports should be kept on a parity (R. 4049). Where the line haul rates are the same to all three ports, I see no objection to adding 2 cents per 100 pounds to those line haul rates to arrive at a shipside rate including wharfage, if that figure will keep them on a parity. In regard to the switching charges shown on Exhibit A-202, the plant of the Anderson, Clayton warehouse on the Illinois Central would pay the $17.80. The $15.30 is from one or two of the other warehouses located on the Illinois Central. I do not know what the loading of the New Orleans Compress Company under this switching movement is, but I base the compilation on 65 bales per car, which is a very good average, I think (R. 4050). I do not know how the average loading runs where the cotton is moving from high density compresses to shipside in cars; but there is an incentive there to load higher than there would be if the carriers absorbed the switching charges. When they pay it themselves they will load it heavier. I am not testifying that 65 bales *is* the actual average, because I do not know what it is. From the New Orleans Public Cotton Warehouse, they have switch tracks, and if the one rate plan were ordered in at New Orleans, we to-[fol. 883] day could switch the cotton for (R. 4051) them and place it at the city front. We have a provision in our transit tariff at New Orleans today that permits an absorp-

tion of 15¢ of the drayage cost, but if the one rate plan were put in consideration would have to be given to that situation if the 15¢ did not cover it, and I do not think it does cover it. I had our freight auditor check all of his concentration claims, and he could not find a single claim [fol. 884] on cotton from the Dallas district in our record, so I do not know just how the lines handle the refund (R. 4052). Our tariff does permit the refund down to 85½¢; we have transit at New Orleans. My Exhibit No. A-204 shows the detention of through export cotton at New Orleans in cars in the depots for three months during 1924-25. It contains also a statement as to the cotton compressed and concentrated at interior points. That was not put in for certain Louisiana lines. This is the information called for by the Commission at the last hearing. I am putting it in for the Gulf Coast Lines and the Louisiana Railway & Navigation Co. The Texas & Pacific have given only their detention on export cotton at New Orleans, because they included (R. 4053) their compression information in the Texas exhibit. I understand that the detention is not car detention but is detention of the shipments that should have been unloaded by the carriers and the cars released. Our exhibit shows cars and warehouse detention separately. Our exhibit is the second to the last page. On the first page of Exhibit A-204, I cannot answer for the Gulf Coast Line as to whether the day's detention is the average day's detention per shipment. I am only filing statement; on domestic shipments, it is the first 7 A. M. after Southern Pacific on page 8, the detention shown is car detention. The time is started at the first 7 A. M. after notice of arrival. That is through export cotton. That would be the basis used to find out whether they were going to be charged demurrage (R. 4055). I should correct my statement; on domestic shipments, it is the first 7 A. M. after arrival. The export shipment would start at the next 7 A. M. after arrival, but in the case of domestic shipment, if you send your notice out today, your car having arrived today, the free time would start the next day. If you delayed a day in sending out the notice, the time would start the next day. On export shipments we have to send out the notice or have a standing order which takes the place

of the notice. There has been some kind of an agreement [fol. 885] with the steamship line to pay demurrage; I do not know whether it is in effect now or not (R. 4056). There is no demurrage assessed on a through bill of lading after it accrues. Under the agreement, if there is any, I presume the Steamship Company would pay it, but I really do not know just what the practice is. I never heard of them collecting demurrage on through bill of lading cotton at New Orleans (R. 4057).

Mr. Cummins: In connection with the exhibit showing the detail of flat cotton movement by railroads into Houston and Galveston, I desire to state that the grand total of the flat movement delivered by the Katy for the 1923-24 season was 62,089 bales, and for the 1924-25 season was 63,661 bales.

WITNESS R. C. FULBRIGHT

My residence is Houston, Texas. Mr. Reed has supplied me with an exhibit which shows some 25 instances where compresses had less than 25 per cent of concentrated cotton and showing the information compiled in similar manner to that in Exhibit A-110. It is introduced as Exhibit A-205. Several times in the course of these proceedings I have requested the carriers to make some study or present some study as to the saving in transportation cost affected by compression in transit. Exhibit A-206 undertakes to supply so far as I have been able to get the information, the data which the carriers have thus far failed to supply and shows, on the first sheet thereof, the gross ton miles, and that should be thousands. The figure expressed is in thousands, and the total freight expense which is the direct expense and all expense allocated to freight based in the same way as shown in Mr. Morissey's exhibit, and from that there is computed the cost per 1,000 gross ton miles. This is based on the gross ton miles behind the tender. It is exclusive of the locomotive and tender. These lines are [fol. 886] the principal cotton carrying lines that serve the Texas ports, and also two of the principal lines serving the port of New Orleans from Texas. They are the lines named there—Texas & Pacific, Missouri-Kansas-Texas of

Texas, International-Great Northern, Trinity & Brazos Valley, Gulf, Colorado & Santa Fe, Gulf Coast Lines and Southern Pacific Lines in Texas and Louisiana. To that I have added the Cotton Belt. That was the only one I was able to get at the time, which is the Cotton Belt of Texas and does not directly serve any port. I would like to have the entire system of the St. Louis-Southwestern and St. Louis-Southwestern of Texas, for the reason that the St. Louis-Southwestern has a much higher traffic density and would show a much lower cost per gross ton mile because of that fact, but not having those figures they were not included in the exhibit. The actual average is taken at the bottom in the same manner as the figure is computed for each particular line. Then I took the average of those two figures, $3.58 and $3.50 which gave me an average of $3.54 over the two year period. That average is simply a weighted average of the two years, 1924 and 1925—and on the second sheet comparisons are worked out exactly upon the same formula that was used by Mr. Morrissey with this exception. In Mr. Morrissey's exhibit he used only one day per diem for the return of the excess empty cars from Galveston. In making this exhibit we use the full amount per diem that was used on the journey to the port. For example, in the first comparison Mr. Morrissey used three days per diem on the surplus cars to Galveston and one day per diem on the return. We have used the full per diem both ways. The reason for that was this: Mr. Morrissey testified he figured one day per diem because that would be the per diem to bring the cars back to Summerville, where they would send them to East Texas for lumber loading. Now, we did not know whether that condition existed with other lines or not so we figured the full per diem on the [fol. 887] return surplus cars basing it on 75 per cent of the cars that were made empty which was the same basis used by him. That was figured out first for the same distance Mr. Morrissey used, following his computation otherwise. Then it was figured for a distance of 360 miles by taking a compress point 40 miles from the point of origin. That is simply an arbitrary figure. It would be the same if you took a station that distance. The expense of moving flat cars back is in your gross ton miles, exactly as Mr. Morissey figured it, and as he figured it in your gross ton

mile figure. The charge for moving the empty cars back to the port, is charged against the freight in moving it to the port. I am following Mr. Morissey's testimony and Mr. Morissey's theories on it. I have had no experience in the auditor's department as a railroad accountant. The same computation is made for varying distances, 300 miles with a compress point—50 miles from the point of origin, 210 miles with a compress point 30 miles from the point of origin. 175 miles with a compress 35 miles from the point of origin. Page 2 is the example using the Morissey formula with the exception I have stated. I have used 3 days per diem instead of one. The first example shows the saving of 76 cents per bale and 100 miles from the point of origin and 411 miles rom Galveston, for having the cotton compressed in transit at the expense of the carriers. In other words, it is his position that he saves 76 cents and pays out 90 cents to do it. Example No. 2 shows a 360 mile haul with a compress 320 miles from Galveston, and in that case saving 61 cents. Example No. 3, using 300 miles with a compress point 250 miles from the destination, the saving is shown to be 50 cents per bale. Example No. 4, 210 miles, with a compress 180 miles from destination in which case he has used two days per diem for the returning to the compress point, and in that case it figured out 35 cents per bale, and in the last case, Example No. 5, 175 miles from [fol. 888] point of destination and a compress point 140 miles from destination using two days per diem for returning it, figures out 29 cents. I am figuring on 20 cars in and 8 cars out. It is based on the theory it would take 8 cars to take it out and 20 cars to bring it in. The last part of the exhibit takes the same operation, using the average cost per 1000 gross ton miles for the Gulf, Colorado & Santa Fe. The selected expense account for 1000 gross ton miles include the following expenses: Locomotive repairs, engine house expenses, enginemen, trainmen, fuel, other locomotive supplies and train supplies and expenses. In other words it includes the expense of operating the railroad freight train, plus the repairs and upkeep of the locomotive, but not of the cars. The expense of operation as shown on the first page has nothing to do with the exhibit. That is included in that course. The selected expense accounts are simply the train operating expenses. The Texas & Pacific,

4,000,000,000 plus gross ton miles operated at an expense of $18,000,000, as is shown on the first sheet. That includes the selected expenses, plus everything else that can be assigned to freight. General office expenses, the salary of the president, and everything else. For 1924 the following was selected expense account per 1000 gross ton miles, exclusive of locomotive for the Gulf, Colorado & Santa Fe: 72.7. The Gulf Coast Lines which is the only one lower than the Santa Fe, 62.9. International Great Northern, $1,073. Kansas City Southern 91.2. Missouri-Kansas Texas System, that includes both the Texas and out of Texas lines—83.7. Missouri Pacific Railroad which is the Missouri Pacific proper—$1,036; St. Louis-San Francisco, which includes the Texas lines, the Ft. Worth & Rio Grande and the St. Louis-San Francisco and Texas, $1,219. The Cotton Belt System, St. Louis-Southwestern System, including the Texas lines—92.4. The Southern Pacific in Texas and Louisiana, $1,135. Texas & Pacific, $1,094. Trinity & Brazos Valley, $1,233*3*. Vicksburg-Shreveport & Pacific, $1,191. Ft. Worth & Denver City, $1,073; Chicago, Rock Island & [fol. 889] Pacific including the Chicago, Rock Island & Gulf, $1,088. I did not have the Orient; I would not consider it a representative line. I did not have the Kansas, Oklahoma and Gulf; I do not have the Texas, Midland, but I can get them all out of this statement. I have taken the principal cotton carrying lines, and I have given the principal cotton carrying lines. The Missouri, Pacific, Missouri, Kansas & Texas, and Southern Pacific are the principal cotton carrying lines of the Southwest. They have a much heavier volume of cotton movement than the other lines. There are a number of roads in Texas that have a small cotton traffic. (R. 4070.) I did not overlook them. They are small factors in the cotton movement, as well as in the cotton compress locations. If carried into a weighted average, they would hardly affect the situation. I do not know what the weighted average is, but I know the relative traffic in a general way of those lines as contrasted with the lines I have given. I did not take the Ft. Smith and Western. Its selected expense account per 1000 gross ton miles, or its gross operating account per 1000 gross ton miles, will be greater, generally speaking. I have included some

of the shall lines, like the Trinity and Brazos Valley. I am quite sure that the Ft. Worth and Denver City does include the Wichita Valley. I would not be absolutely certain. (R. 4071.) Under Example 1, I show a 500 mile haul with the compression point 100 miles from the point of origin, where the carrier saves 76¢ a bale but spends 90¢ to do it. Under Example 6, I used the same distances and show a saving of 61¢. The difference is that the first is the average for all of the lines on the exhibit and the second is the Gulf, Colorado and Santa Fe Line. From Example 6 on I have used only the Gulf, Colorado & Santa Fe. I took various distances just to get a representative picture. The next distance is 360 miles and I used a compression point 40 miles from the point of origin, and then I take 300 miles with a compression point 50 miles from the point of origin, then 210 miles with a compression point 30 miles from the point [fol. 890] of origin and then 175 miles with a compression point 35 miles from the point of origin. I picked those distances arbitrarily. You can pick out any distance you want and it is simply a mathematical formula you apply. I use distances ranging from 30 to 50 miles. The first instance was Mr. Morrissey's exhibit. In most instances I do not think you will find the haul to the compress point will exceed those figures. The haul to the compress point affects the absence of saving to a small degree certainly, because you are hauling 20 cars instead of 8 until you get to the compress point. The longer the haul to the compress point, generally speaking, the higher the cost, but that does not affect your net saving always to the extent one would think, because you are using a greater proportion of the total haul. You will save more if you have the same total length of haul and were stopping closer to the point of origin for compression (R. 4073). The longer the haul beyond the compress point the greater the saving. Taking from Oklahoma and Arkansas to the ports generally, there certainly is a substantial saving in the Railroad's costs in the hauls, but when you get down to the short hauls the question arises as to whether there is any saving or not. I assisted in making a computation in a case three years ago in which we found a weighted average haul, based on the short line mileages as found in Fonda's tariff, to Galveston was 317.6 miles for the season 1921-22, and that included the short distance stuff as well

as the long distance stuff. I include the per diem of returning cars from Galveston and do not include the total cost of moving the cars back because you figure your (R. 4074) operation based on the total gross ton miles, including all empty equipment. You are charging against your revenue haul, the only haul you get any money out of, not only the cost of handling your revenue freight and cars containing it, but the cost of hauling all your empty cars as well. The [fol. 891] gross ton includes empty and loaded cars and everything and you charge it against revenue freight (R. 4075). Taking the total expenses shown on the first page of the Exhibits and dividing them by the gross ton miles of loaded cars only, I would have had a much higher figure. It would have been a little nearer the net ton miles, because it would have eliminated from the computation the hauling of the empty cars, but I have put in all the empty cars. You can figure the return movement on the empty car, using the same $3.54, and figure it out that you will not save the cost of compression on a 300 mile haul in my judgment. (R. 4076.) If you take the weight of the loaded car, including the weight of the commodity, and multiply it by the gross ton mileage mentioned, you would get the total expenses. I have taken both the loaded and the empty weight of the car, and that gives the gross ton miles. (R. 4077.) If you are going to use your gross ton miles alone on the empty movement, you should eliminate the per diem, which is an expense of operation and includes the expense of maintenance and use of that car and is in all the other expenses. You can get some long hauls to the port of Houston from the Texas Panhandle; the hauls from the Texas Panhandle to the Port of Houston are pretty close to the longest possible haul from Oklahoma, Arkansas, or Texas. (R. 4078). Some of the points on the Panhandle division of the Santa Fe, in Oklahoma, give a very long haul to Houston. I do not know how long it would be. I do not know where any cotton is produced in Oklahoma, using Fonda's short line mileage circular, more than 500 miles from Houston, Texas.

One witness for the carriers testified to the enormous amount of claims paid on cotton, $1,000,000.00 a year, he said. In 1924 the American Railway Association, carry-[fol. 892] ing reports for more than 95% of the mileage,

including all of the cotton-carrying lines in the United States, showed a total amount paid out for loss and damage, delay and destruction of cotton of $125,880.

[fol. 893] For 1923, $226,789. Based on the revenue shown by Witness Wettling, testifying (R. 4079) for the railroads in I. C. C. Docket 17,000, the Western Lines, 59 Lines, which includes all of the principal cotton carrying lines, handled 3,457,683 tons of cotton for an average haul of 265 miles, and the amounts paid out in claims per 100 pounds would be less than 25 hundredths of a cent. I do not have the gross revenue on cotton (R. 4080).

WITNESS S. E. WALKER

My place of residence is Houston, Texas. I have been engaged in the operation of compresses for seven years, since 1919. I have been employed as press room foreman with the McGregor Compress & Warehouse Company at McGregor, Texas, 1919 and 1920. I was press room foreman for the National Compress Company at Taylor, Texas, 1920 and 1921. I was Superintendent of the Sinton Compress Co., Sinton, Texas, 1921 and 1922. I was with the Turning Basin Compress Company for the season of 1922-23 and part of 1924, and with the Houston Compress from that time to the present date. I am in a general way familiar with the method of operation of the interior transit compresses (R. 4081).

Cotton is unloaded from a box car onto the compress platform. In case it is transit cotton it goes right to a central location which is the press room. If it is concentrated cotton, it is weighed, sampled and blocked in the warehouse. In the case of concentrated cotton, in addition to sampling and weighing it, the weight ticket has to be made out and filed in the office and forwarded to the owner of the cotton. The cotton has to be blocked back in the warehouse for storage. The weight sheet serves as a record of the receipt of the cotton. Whatever number of bales the mark you are unloading calls for is recorded on the weight sheet and the compress tax number applied to each bale *the* a ticket issued to the owner of the cotton. An individual receipt for each bale is issued to the owner. At

[fol. 894] the beginning of the season it is generally blocked back into two rows in the warehouse, with an aisle on each side. That condition exists until the cotton begins to move. I should say that the (R. 4082) cotton is blocked that way until your entire plant is full. After that it is necessary to go back and fill up these aisles, and finally during the peak of the season, they are all full. As a general rule there is only one trucking aisle down the center of the shed. If room is not necessary to take care of your receipts, it is even necessary to top it or go to the ground. You have to do something to relieve the congestion. The amount of storing would depend on the amount of storage room and the amount of concentration that we have (R. 4083). During my three years in the interior, we were forced to top and go to the ground at Taylor all during one season. At Sinton, we did not top, but we were forced to go to the ground. That calls for an excess amount of labor in that it takes a greater number of men and is a slower operation. The cotton is ordered out of the warehouse by tag numbers. The press receives a shipping list. It may call for 50 bales or 100 bales; it does not make any difference. You have to dig it out, send a man out to spot it, either by a colored flag or something to distinguish the bale you want. After that is done, you have to send a crew in to dig it out. Sometimes it has to be blocked out; sometimes it has to be pulled out (R. 4084). It would only be pulled out in the case of four or five bales where it would be easier to do that than to cut an aisle down to it. When the plant is congested, it is necessary to move a good many bales to get cotton out of storage. If we were operating the compress solely for transit cotton, the actual operation would be the same, unless it was a plant of small capacity that used one big press screw for their operation. In that case it would not slow down the number os bales per hour or per day, or anything like that, but you would have to shut your press down part of the time to bring your cotton in from storage for compression, unload, and do the other work at the plant. It is generally the case, [fol. 895] based upon my experience in the interior, that cotton is ordered out during the time it is moving in large quantities for transit. The shipper of the cotton gives the press the tag lists of the bales he wants shipped and we

have to go into storage and get them and bring them into the press room, press them and load them. The practice of putting cotton on range, is followed in case a local buyer is selling cotton there to another local buyer or exporter or to anyone, he gives the press the tag list of the number of bales he wants put out. It sometimes happens you may get to that cotton (R. 4087) without having to move the other, but that is not very often the case. You have to go in and get it, bring it out on the platform, or any other place where you might have room to block it, where the buyer can get to it. He wants to see each side of the bale. Where you have to do that, the operation is almost the same as bringing it in for compression. Very often the cotton is rejected, and then we have to cut it out and put it back in storage and the seller will give you a list of bales to take the place of the ones the buyer rejected, and you have to go in and get those and bring them out. If cotton is very wet when it comes to the press, it has to be dried before it is conditioned. Sometimes you will find a bale that is damaged on one head, and may not call for much work. You will take off one band probably and pick it, and sometimes you will find a bale that is damaged on all sides. In that case, you have to take off all of the bands and pick off every bit of the damaged part and then press the bale, if it is a storage bale, so that you can store it back in the warehouse (R. 4088). By picking, I mean picking off all of the damaged part; every particle of cotton that is damaged has to come off of the bale. That is a very expensive operation. I think on an average, that the cost of it is about 35¢ per bale. I have no way of knowing how much of that would occur in any given season during the years that have been referred to here. I know about what did occur during the time I was there. We find more [fol. 896] reconditioning during a wet year than during a dry year, much more. Where the cotton is marked on both sides in the press room, the most popular method is picking the bale up with a hoist, and putting it on a truck and having a man standing behind the press and a marker right before him, with stencils and brush and everything he needs, and this bale is dumped off of the truck to this man who catches it, and the marker marks it on the (R. 4089) down side first, and then it is thrown back on the truck

and the marker marks it on the top side. It takes two men. The two men can keep up with the operation of a press at any speed. The cotton is trucked to the car when it is to be topped. Some presses have a topping machine, which I have always found very satisfactory and a labor-saving device. Your machine is generally set in the car when the floor is loaded, just leaving space enough in the doorway to set your machine. That space is filled after the car is topped. The trucker comes right from the press and dumps his bale on the topping machine. One dumps on the machine and one operates it. The man operating the machine pulls the bale up to the level of the top of the cotton, and we have three and sometimes four men on top to take it and roll it back. In the absence of a topping machine, the ordinary size of a topping crew would be four men and a trucker. That does not include the men rolling it back (R. 4090). In my experience, the presses I have been connected with, have not kept a full crew of men the year around. If a press has any building to do, such as repairing or putting in a new building or platform, they always give their men preference on that kind of work. My experience has been that when the cotton stops moving the labor is all cut off. It may be they will keep two or three old negroes around that they have had for years. The labor shortage occurs generally during the fall of the year at the peak of the movement of the cotton. I do not know of any reason why a compress operator cannot load out cotton that has been concentrated as heavily in the car as he can cotton which is transit cotton, provided he has enough cotton going to the destination (R. 4091). Cotton is generally weighed as it is received out of the car from the railroads, before being blocked back or even before [fol. 897] it is sampled. So far as I know, that weighing is performed for the owner of the cotton. I have never known it to be performed for anybody else. I have never heard of any cotton being weighed in transit, except *with* the owner wanted it to be weighed. The compress might weigh the transit cotton for their own convenience at their own expense. If the owner requested it, it would be charged to him. My Exhibit A-207 is designed to show the number of operatives that would be required to keep a press in full operation performing both transit and concentra-

tion services to the ordinary capacity of one standard compress. It is based upon my own experience in operating and observing the operation of compresses (R. 4092). It is true and correct to the best of my knowledge and belief. The figures at the top of this exhibit showing the total bales compressed and stored were taken from Mr. Oppenheimer's exhibit A-101. The percentage was worked out on a bale basis following the formula in the exhibit presented by Mr. Brillhart. The operatives under the heading A, B, C, D, and E, have been charged entirely to compression (R. 4093). The words "Bale Basis" should be erased, because the total is charged to compression according to the Exhibit. Those operatives perform their services in the press room and on the press. The operatives under subdivision F, called off-bearers are the men who load the cotton from the press to the (R. 4094) cars, top it, mark it, and carry it right from the press to the cars. I have a topping crew under G. I have allocated that on a bale basis, because that service is just as much for the shipper as it is for the railroads. If we did not have a press there we would be loading entirely for the shipper. For that reason, it is service for one just as much as the other. Off bearers under F do not have anything to do with the actual operation of the compress. We would have to get the cotton away if we were not doing any storing, and were doing only compression in transit. On the other hand, if you were taking your cotton out of the storeroom and loading it into the car, you would have to have the same number of men to do it. If I were figuring the cost of compression, I would not figure those off-bearers in the cost, but on a transit proposition, they would necessarily have to be [fol. 898] figured. This is a storage and a transit operation (R. 4096). Sub-division H, shows unloading at the time the car is received at the press. I have set forth the Crew there and allocated that on a bale basis. Part of it may be transit, and part of it is storage cotton. Your car may be mixed and it may be straight. It doesn't make any difference. You start at one end of the train and go right down through it. You are handling both transit and storage cotton when you unload it. I took the total number of bales for all states compression and the total number of bales for all states stored, on a basis of 61.25 against 38.75.

The next sub-division I, is the flag gang. I allocated them to storage because they are always engaged in that kind of work. That is the crew that brings the cotton into storage space after compression, blocks it back (R. 4097) and makes room, etc. The item of re-handling, under the next sub-division, is re-sampling, re-weighing, re-topping the cotton in the warehouse, going to ground, coming off of the grounds, taking cotton down from the top and such work as that. The re-handling crew should never have anything to do with any transit cotton at all. Any work that these men would do would be on storage cotton. Whether the compress company would keep eleven men to do the work of re-handling, depends upon the volume of cotton that they get at the press. They might not have anything like that many men. If the capacity of the plant was small, the allocation would be the same if they did not have anything but a press crew. If they stopped the press crew and had them do this work, it would have to be divided in this manner. All of this work would have to be divided in this manner whether they had sufficient men to do it, all at the same time or one item at a time (R. 4098). In plants of small capacity, it is usually the case that the re-handling is done either in whole or in part by operatives who may be engaged in the rest of the services about the compress, but that does not have anything to do with the way the labor is apportioned. If you did not have anything but a press crew, your storage would amount to more, because you would be paying a higher price per hour. The next item covers every kind of work that might come up, such as filling water barrels, repairing platforms, cleaning tracks and premises, picking damages, and all such work [fol. 899] as that. If you have a wet season, that item would be considerably larger than I have it here, I believe, in proportion to the number of bales handled. I have allocated that to storage, because we never use more than one sweeper in the press room, and I have (R. 4099)) already charged that to compression. Totalling these various operations and allocations, I found that 53.14% was allocated to compression, and 46.86% was allocated to storage. I have shown 94 men. If the volume of cotton was small all of this work would have to be done. The volume does not have anything to do with the work that has to be done

as I have laid it down here. Each operation is necessary. In that case you would use your press crew for pressing part of the time and for doing the other work part of the time, but the proportion would be the same (R. 4100). The proportion to the number of bales handled to the number of men you have would be the same. I have made an analysis of Exhibit #A-89, introduced by the Witness Brillhart, which shows diagrams of various size compress plants, for the purpose of determining from these diagrams what proportion of the area was utilized for compress room and compress purposes and what proportion was utilized for warehouse and for other purposes. That study is shown in Exhibit #A-206, which is true and correct according to the best of my knowledge and belief (R. 4101). The number of men I have set out on Exhibit A-207 would be necessary in a single press and concentration point, provided the volume of cotton was great enough, operating at capacity. They could handle 1,200 bales a day; I based the Exhibit on 1,000 bales; it is based on ten hours per day. It is also based upon the assumption that there would be a full operation of a plant the size that I have used. It often hapens that when a bale is turned out a part of the [fol. 900] band will stick out; the railroads, or the state law, require that band to be tucked back in. The spider killer does that. It is a compress proposition entirely (R. 4102). On Exhibit A-208, I took the measurement Mr. Brillhart gave during his cross examination, and took the entire area of the press room, boiler room and all of that part, and allocated that to compression. I next took the area of the railroad runs, and then I took the area of the office, and dray platform and added these together, and then I took 61.25% of that total, which is the percentage of compression, and then I added this percentage for compression to the entire area of the press room, and divided [fol. 901] into that the total area of the entire plant. That is how I arrived at that percentage (R. 4104). All of that part shown on Mr. Brillhart's Exhibit A-89 as the press room and machinery room, is allocated entirely to compress. The warehouse would be left entirely for the warehouse, and the railroad runs, office area and city loading platform I allocated on a per bale basis, using the same formula that I used in the preceding exhibit. In the last

column, I show 30% against Mr. Brillhart's 40%, which I got from his Exhibit A-91. In the case of the seven compartment plant, I took Mr. Brillhart's figures (R. 4106) from Exhibit A-91. He shows a plant of 535,000 square feet capacity. I allocated the railroad runs between both services, because transit cotton is unloaded over those runs the same as storage cotton and should be allocated on a per bale basis.

I have had experience in the handling of cotton for re-sampling and re-weighing. We had a good deal of that in my experience. It always happens after it is stored. It does happen that the samples are at times lost; it is generally carelessness on somebody's part. When a sample is lost, there is nothing to do but re-sample the cotton (R. 4108). When we re-sample and re-weigh cotton, we have to bring it out, re-sample it and re-weigh it over the scales just the same as in the first operation. After you have it all out for re-weighing, it must all be blocked in one pile, and you have to go back and make room for it to come out. The same operation is necessary for re-sampling. It has to come out where the sampler can get to it. That is, if it is a considerable number of bales. It sometimes happens that they can go in and cut a sample without having to drag it out. Services of that character I would charge to storage entirely.

Cross-examination:

I left McGregor because I thought I saw a better opportunity for advancement and could earn a little more. I worked for the National Compress and Warehouse Company at Taylor (R. 4110). I was press foreman there for one year. I left Taylor because I wanted to, the same rea-[fol. 902] son I left McGregor. I left Sinton because I wanted to, because I had a better offer in Houston. I am now working for the Houston Compress Company and have been for two years. As Assistant Superintendent of the Fifth Ward Plant. The Sinton Plant had a storage capacity of about 5,000 bales, I believe (R. 4111). I would say that the annual business they could store in a plant of that size is about 35,000 bales. If they handled that much they would have to double row it, and keep it blocked up all the time, and possibly go to the grounds. They

would have to break an aisle up and down the center for trucking. I think the average time a bale of cotton stayed in the warehouse at Sinton was about 15 to 20 days (R. 4112). The class of man that would do the picking would be an elderly man, not husky enough for trucking, not necessarily cheap labor, just an average. We would pay a man like that about $3.00 or $3.50 a day for 10 hours. The maximum would be about 35¢ an hour. I do not know just how long it would take a man like that to pick the scraps off of a bale of cotton (R. 4113). It might possibly take him an hour if the bale was damaged considerably. Trimming cotton and patching sample holes is a very fast operation. I should say one man could do that operation at the rate of 350 bales per day. By picking, I mean reconditioning (R. 4114). On a car of flat cotton coming into the compress, we generally need two men in the car to break down the cotton. If it is tiered, two men can do it. Two men would be all we would need in the car to load the truck. We would have ten or twelve truckers to truck it from the car to the press room. We would need one man to block it in the press room (R. 4115). He would probably not put his hand on each bale, but he would keep it straight. He would simply direct the location. There is a difference between directing the location and assembling. When the trucker comes from the car to the press room, we have a man there to tell them where to put it. The trucker actually slings the bales around. If he dumped his bale out of place, [fol. 903] the other man would go around and straighten it out. One man would do that (R. 4116). I would use 10 truckers at a place like Sinton, where there is an average haul. I would use three men and one boy for hooking the cotton on the tie press. One of the three would drag the bands over to the band bench. I would have two men there opening the cotton, and three men at the band bench (R. 4117). I would need two men to go from the tie press to the big press with the cotton; they are called feeders. They would operate a truck. The men at the tie press load the cotton on the truck for the feeders (R. 4118). The trucker puts the bale into the press himself. Then we need two lever men to operate the press. If you use four tiers you would need four band shovers. You could use three tiers. I have done that (R. 4119). You would need two sewers and one fire-

man. If using coal, I suppose you would need a fuel passer. I have never seen a coal operated press. You would need one man to operate the bale hoist, and one marker and I suppose one man could turn the bale. I always dumped it back of the press and marked it and dumped it on the truck. You would need one spider killer (R. 4120). You would need eight men to truck it from there to the car. One man will load the cotton on the floor and then he would have to help load it on top. We need three men on top. If you have no topping machine, which I have always used, the bale would have to be lifted from the floor up to the top (R. 4122), and it would take five men to lift the bale up there. Those men are not on the Exhibit; I used a machine. I do not find that the machine slows up the operation. We have to move the machine from one car to the other; that would not necessarily show up the progress in getting the cotton up. While the machine was being placed in the car, they may have to dump and end up the bales. They use a machine at Taylor and at Sinton; I believe they did not have one at McGregor (R. 4123). It takes one man to grind the machine. One may can place the bale in the car so that it can be loaded; so far as I know, they always did that with one man at McGregor [fol. 904] and Sinton and Taylor (R. 4124). I worked under Mr. Cook of the National Compress Company. I did not say that 56 men are necessary to operate a compress (R. 4125). Leaving out storage business, and taking into consideration only transit cotton, the 56 men I have described would be necessary to compress cotton. Those 56 men could handle 1,200 bales a day, based on a 10 hour day. There should not be any delay to the compress crew by reason of broken lots. You keep a solid stream of cotton going through all the time, and if you have your crew trained, they will not look for the lots nor the changes. I do not know whether the railroads permit loading out of broken lots or not. It is done. Loading out of a part of a bill of lading is done (R. 4126). I do not know whether the railroads permit it or not. I do not know whether the railroads require loading all the cotton for one destination in one car; that is not done either. It is done a good many times where they have the cotton already in the press room. They would not load cotton to Houston in a car that would

have cotton in it for Galveston, but they do load it for different compresses in Houston, where it goes to the mixed platform (R. 4127). They might load 7 or 8 different shipments in one car for the same town, but not for different towns. I cannot see how a compress in assembling those lots would delay its operations. At Taylor, Sinton and McGregor, we sometimes unloaded the cotton out of the car, sent it through the compress that day and into another car, but a good many times it would be part transit and part storage and we would move it into the press room and block it up and take it out later. Sometimes transit cotton would go right through the compress and out into another car (R. 4128). Sometimes it would stay there. If it was mixed, we would segregate it. It would take eight men to truck from the compress to the car and twelve men to truck from the warehouse to the platform, because the cotton coming out of storage has to be dug out. Sometimes the truckers would stand there while they were digging it out; they might be operating in a place where two trucks could not pass. The biggest part of the time they would be moving. If a topping crew were added to the eight men trucking from the press to the car, you would [fol. 905] have the same number of men, some of them loading in the car (R. 4131). The spotter does not do any actual work. He is in the door and designates the bale the crew is to take. Two men could dig the cotton out of storage and keep twelve men busy; they might call upon a trucker to help them, or they might call upon several truckers to help them block it out. I think the Sinton plant handled about 30,000 bales when I was there (R. 4132). I think about half of it was storage. They could handle 35,000 bales. We never had to go to the ground with transit cotton, because they can load it from the press room right on out, and it is easier than going to the ground. They could get equipment in a few days; I have never seen them wait for equipment. I have seen the carriers restrict the equipment that brought the cotton to the compress to be utilized by that division only, and I have seen them make allowances when the car could be used for other places.

Mr. Reed: Mr. Paul Walker of Oklahoma asked for a list of authorities in Moorehouse's Exhibit A-84. I made up an Exhibit showing a list of the authorities by page number

for the Exhibit A-84. Mr. Walker asked for it and you ask me to furnish it. It gives authority for some statistics and is offered as Exhibit A-84-Supplement.

WITNESS T. B. KEENAN

I live at Houston, Texas. I am connected with the Shippers' Compress Company of Houston, Texas, I run the uptown affairs for the company; my business is in the office. My Exhibit #A-209 is a statement based on the season of 1924-25 showing the cost of compression and other services performed by the shippers compress company. The statement is a copy of the audit of F. G. Maquelette & Company certified public accountants. I am familiar with my account, and I know that these are correct (R. 4145). Practically all the cotton that is compressed is concentrated. [fol. 906] In addition to compression, we store, warehouse cotton, and perform concentration services. The cost of the concentration service is shown under the heading "Other services." If a cotton shipper should offer ou company cotton for standard density compression, to l received by our press, compressed, and put back on the cars, we would make a charge for that service of 60¢. We perform very little compression for account of the railroad (R. 4146). I believe we had 60 bales last season. If the railroads are going to put 18¢ to a standard compression and put that in the tariff, we are going to get them to pay if we can. The tariff of the Shippers' Compress Company, shown in Exhibit #A-127, gives under a certain heading "Factors' cotton" a charge of 10¢ per bale for certain service. We do not make any money out of that 10¢. That is to get the cotton in (R. 4147). It is not consigned to us; it is consigned to the factor. We get our charge later on. We receive 10¢ on the service performed. The next time that cotton is touched, it is 15¢ to put it on range, sell to the buyers, get a compress charge, loading, marking, placing patches, sampling, any service that we might perform. Factors' cotton is very expensive to handle; it is practically all flat and it has to be tiered and dug out by numbers. It is sold and handled on flat terms. The charge of 10¢ will not pay the cost of the service we perform. The

other services would be cared for as shown under the "Other" heading on this Exhibit (R. 4148). The tariff on buyers' cotton would not apply to cotton that had been brought in as factors' cotton. If factors' cotton is compressed by us, the charge goes to the buyer; the factor does not pay any compression. The factor handles and keeps the cotton with us until it is sold. If cotton should come in to us compressed for account of a factor, the tariff would be used just as a flat bale (R. 4149). If it were shipped out, he or somebody would have to pay the 60¢, even though we did not compress it. If it came in high densitied to a factor, we receive a compressing charge for it. That cotton will change hands several times while it is in our possession, and that sometimes requires re-handling (R. 4150). The 60¢ charge shown on the tariff under the [fol. 907] heading "Buyers' Cotton" receiving or storing by marks, ranging two lay days, compressed, seven bands, 20 days free (R. 4150) storage, applies to buyers' cotton. The two lay days are given to him to close his cotton. If he wants it compressed with eight bands, for standard density, there would be a charge of 5¢ a bale for the extra band. We compress some cotton standard density with seven bands. The loading out would not be included in the 60¢ charge. If the cotton were to come in to be compressed to standard density and loaded out again without storing, the charge would be 60¢.

Cross-examination:

Exhibit #A-209 shows the number of bales compressed, and we store all of those bales; there might have been 30 or 40 bales of transit cotton. They come to us for storing, merchandising and compression but primarily for storing and merchandising. The unloading is charged to the compress. We compress practically all of it. We charge the unloading, incoming, and ranging to compression. It is my testimony that it costs more to break it out of store and load it than it does to unload it, range it, sample it, move it from there to the compress, compress it, and take it into the storage room and load it (R. 4154). It takes more labor on account of the 80,000 bales of flat cotton that is stored away, and has to be dug out by numbers. It would be sold, dug out two or three times, and put on range; we

do not charge all of that to compression. The first ranging is charged to compression, that is when the cotton is leaving the car to go to the compress, blocked away, and that is the compression end of it. We have about 14 or 16 men to break it out of store. The same gang trucks it from there to the car (R. 4155). We do not sample any cotton. If we re-handle it for them, we get an extra charge. They do their own sampling. We have a work report, shown on the pay roll every week, how much to charge for compress room to compression, for marking, for ranging, and for all the other services, pickerage, and the books are posted that way (R. 4157). We charge to the machinery [fol. 908] account that part of the building that houses the machinery and the boiler room (R. 4158). I am positive that building and machinery are not segregated. We have a wood structure, with some concrete, and the runways and buildings ought to be more than repairs to machinery. We do not allocate a part of the Engineer and Fireman to storage (R. 4159). They all go to compression. We have seven or eight clerks in the $15,000 item, all charged to other service. The cheapest man we have it $175.00 per month (R. 4160). On 1,000 bales to be compressed to high density, loaded back into the car with seven bands, the charge would be 60¢, and we would not charge that man for the unloading. I do not know what would become of the 1¢ unloading allowance that the railroad makes. We do not make a charge for unloading and never have. We would not put on an extra band without additional charge. We would mark it on both sides without charge. We vary from this tariff and make other charges in bidding for this business (R. 4163). I believe it would cost 12½¢ a bale to perform the service of receiving factors' cotton, for which we charge 10¢.

Redirect examination:

In the handling of cotton for factors, we have regular customers. They understand the method of operation of our tariffs. There is a labor account on our books for each service. There is one labor account for each service, on our books, namely, ranging, loading, picking, compression, sampling gang, marking gang. Our compress is in

operation substantially the entire year. We do not keep all the men; if we can not use a man, we cut him off (R. 4165). We have a heavier crew during certain seasons than at others. We have two compresses in that plant. During the busy season, if we have to operate two, we do, and when we close one down we cut off the crew. We give the men their choice of taking trucking or we let them go. The [fol. 909] daily capacity of one of the compresses is 4,000 bales a day. That is a double shift, running all night. We work a double shift, making 20 hours (R. 4166). We can put 900 bales to high density in 10 hours on one press; we can put 1,000 to standard density. Practically all of it goes to high density. Most of it is from standard to high denstiy. We do not perform both operations on the same bale of cotton; it would go direct from flat to high density (R. 4167). We charge 75¢ for that, and skip the [fol. 910] 60¢ charge. This .484 cost of compression includes all character of compression our press performs.

Recross-examination:

All of the cotton that we high density comes in for storage, and we charge 75¢ for that. In addition we charge for marking and unloading and loading and shipping. Although the cotton may change hands several times, we do not charge more than one compression (R. 4169).

WITNESS S. M. BLOK

I live at Houston, Texas, and am Cashier for the Exporters Compress. My Exhibit A-210 shows the total labor and other costs incurred by my plant in operation for the season 1924-25. It is true and correct. The total shown in the first column was taken from an Audit made by Ernst & Ernst, the total expenditures. We handled during the season 1924-25 (R. 4170) 170,015 bales. We shipped 166,309 bales, making a total of 336,324, or an average of 168,162 bales handled. That is the way we get at the figure at the bottom of the Exhibit called "Average Bales Handled." The first item is the total for labor during that season, and in arriving at the total cost per bale, we divided that amount by the average 168,162. In Item two,

I show the salaries of the Superintendent, Clerical help, and checkers. In order to arrive at the percent of bales compressed, and received and shipped, I have added the number of bales pressed, 161,843, to the average number of bales received and shipped, 168,162, giving me a total of 330,005 bales. I took the percentage of each of those, as shown at the bottom. The number of bales compressed would be 49.04% and the number of bales concentrated would be 50.96% (R. 4171). In order to determine what the charge should be for compression, I have taken Items in column 2 of .1513 under item 2, and got 49.04% of that and charged that to compression and the balance to concentration. The $6,000.00 item in item 2 has been charged entirely to compression. The same applied to fuel oil, [fol. 911] supplies, buckles, twine, rivets, etc. Also repairs to machinery and equipment, and then the balance of this Exhibit is split up under the percent 49.04 and 50.96 (R. 4172). The item of depreciation is split up on the same percentages, 49.04 and 50.96. If I had made actual segregation of depreciation as between compress and machinery and building, the item of .0255 would have been less. The investment in the building and machinery is so much less as compared with the balance of the plant (R. 4173). I used the following rates of depreciation: bricks, frame, and galvanized iron 2.5%. On the concrete construction, 1.5%. On the fence runs and bridges, 8%. On the pipe and fittings 6%. On the tools and machinery, and tanks, 4%. On the electric system, 7%. The fire apparatus and the office furniture and the auto trucks, 10%. The 10% also applies to general office furniture. The sprinkler system, 5%. We do not have any insurance on transit cotton. We do not get any transit cotton. The labor cost for the different operations is based entirely upon payroll. The Superintendent gets a record of all of the operations, and the number of men required on those operations from the clerks. That total amount equals the total amount of the weekly payroll. Then he has totaled up difference (R. 4174) operations under one head, and divides that by the number of men it took to do a certain amount of work during the week, and at the end of the year these average costs were put together and this is the result. I did not take the nearest cent in figuring that labor cost. Where it ended in 5½,

I made it six. If it was 5¼, I made it 5. The 10¢ charge on factors cotton is just a starting charge. It does not pay. For some reason or other, it has always been that way; I cannot tell you why (R. 4175). The only difference is that at most of the compresses they charge a nickel, but I thought we had better charge 10¢. Even that is not enough. I have been working in the general office of compress companies for about 12 or 15 years. I was with the merchants Compress Company about 10 years. They handle their cotton in the same way, making the small charge, when I was with them, of only 5¢. The 10 cents does not cover the cost. The man is not going to get his cotton on that 10¢ (R. 4176). We charge the 60¢ to the man that [fol. 912] buys the cotton. Most of the ranging cost would be charged to the factors (R. 4177). All charges up to the time the cotton is sold, including storage, if there was any, would come to the factor. From that time on they would go against the buyer. As a general rule, the cotton that comes in factors' cotton, goes out buyers' cotton. If a man had 1,000 bales of cotton, and brought it to us to be received, compressed to standard density, and put back in the car, we would charge 60¢ for that service. If he wanted more than 7 bands, we would probably charge him 5¢ a band (R. 4179).

Cross-examination:

We do not observe the tariff with reference to the marking; we give him the marking too. It is not necessary to mark it on both sides, unless he wants it. If he wanted it marked on both sides, we would do it. We would charge him 60 cents to unload the cotton, compress it, mark it and reload it (R. 4179). The provision in the tariff for shipping by rail, 10¢ per bale, does not apply on that particular cotton, which is to be only compressed and put back in the car. We have instances like that. I do not know when. We have had an instance like that in the last five years. I do not know who it was; it amounts to very little compared to our total business (R. 4180). I do not remember whether we had any like that last year. I did not say that Ernst and Ernst had or had not approved the method of allocation used in Exhibit #A-210. On Exhibit #A-210, I have allocatd to storage receiving from car

and loading into car; that is for concentration service. Receiving from the car includes the cost of unloading it from the car to a place on the yard. This particular operation does not include any of the cost of bringing it from the yard to the compress. This cotton is going to storage (R. 4181). This Item does not mean taking the bales from the yard to the compress. We have also charged the amount of 6½¢ for loading the cotton into the car from storage. If we charge to the compression all of the cost of unloading and all of the cost of loading, it would not make a material difference [fol. 913] in our figures, because the trucking from the compress would not add more than ½¢ (R. 4182). If we added to the cost of compression, the cost of unloading the car and the cost of loading it, the difference would not be more than 1½¢, because the unloading and trucking to compress is nearly the same as getting it from storage (R. 4183). The item of 5¢ for unloading and trucking to compress is the same as the item of 5¢ for receiving from car. It is charged in two places, because the first column is for the service of compressing, and the second is for the service of concentration. They are two different operations. Unloading, putting it on range, then trucking to compress room would cost 10¢. Our warehouse is principally a storage, concentration and compression business. We do not do any compression in transit. Not necessarily all of the bales coming in receive storage. We get ranging out of it, except the factors' cotton. We get storage, possibly after giving 30 days free time on it (R. 4186). On June 30th, 1925, our permanent assets were $364,953.49. We do not handle any transit cotton on high density. I do not remember if we did (R. 4187). In addition to the high density charge of 75¢, we have other charges to the shipper for marking, loading, and unloading. The same thing applies to the 60¢ charge if the cotton is concentrated. I do not think we have had a case where the cotton was not compressed. We did have one case with the Merchants Compress Company, and the man objected to paying the compression charge; we made some charge, but I have forgotten now what it was. We do not have very much cotton moving in after concentration that has previously been compressed to standard density. Most of it moves in flat, or will be compressed from standard to high density on

the orders of the shipper. If the cotton had been previously compressed to standard density, and a purchaser desires it shipped out without further compression to high density, we do not charge him the compression on it (R. 4189).

[fol. 914] WITNESS H. A. AHLERS

I am with Alexander Sprunt & Son, Houston, Texas. My Exhibit #A-211 shows the cost of compression and concentration service at the Ship Channel Compress Company. It is true and correct according to the best of my knowledge and belief (R. 4190). It was prepared along the same lines as the Exhibit A-210 by Mr. Blok. The figures shown in the first column under labor, represent the total labor cost for the year. The other figures are the figures set out for the respective accounts allocated according to the methods shown on the Exhibit. A good part of the cotton coming into our plant has been previously compressed to standard density, and may be recompressed to standard density. The principal reason for that is that cotton coming into a port compress compressed to standard density, contains a number of small holes which must be covered in order to make a merchantable looking package. The sample holes are usually responsible in the weight, especially when shipment is made to domestic mills, and this recompressing to standard density and placement of the patches over small holes is done to avoid or minimize the loss in weight, some of which is due to pilferage. An allowance is made for patches in selling to domestic mills. In the Carolina and New England Mill Rules, there is a tare allowance of 4.8% of the weight of the bale. That permits the inclusion of patches as a part of the allowance. We put approximately four to six pounds of patching on a bale of standard density compressed cotton (R. 4192). The bale is sold to the mills on the gross weight. A tare allowance is the amount of bagging and patching to cover the bale, which is 4.8% of the weight of the bale, or 24 pounds on a 500 lb. bale, but the seller gets a price for the entire gross weight of the bale, including bagging and ties on the cotton.

Cross-examination:

I do not know whether or not I am a Traffic Manager. I look over the Traffic Department in a sort (R. 4193) of a supervisory way. I have had some railroad experience at [fol. 915] Galveston with the Santa Fe, in the rate department, handling cotton concentration claims, about ten years ago. Most of the cotton we receive is already compressed, and I do not know the average number of bales loaded in a car. Some of it will be topped, not a lot of it. If it is topped, it would be necessary for us to have a sufficient number of men in the car to break the cotton down for the truckers. I do not know how many it will take (R. 4194). It would take more men and be more expensive to bring it down out of the car, unload the car, and truck it to the warehouse than it would to weigh it. It would take more labor. Usually the cost of weighing includes the weighers' salary, and you cannot compare that with the truckers, earning 30¢ an hour. I cannot tell what makes up the item of 3¢ per bale for receiving from the car, and the item of 5¢ per bale for weighing (R. 4195). I cannot tell why it ought to be more for weighing than for unloading the car. These costs are taken from the daily cost sheets which are required of our compress superintendent, and are the average costs for the services shown. It costs more than 3¢ per bale to store cotton. We do not block it in solid and stack it up on top of the bales. The cotton is received from the car, arranged, sampled, weighed and picked off the range and stored at 3¢. This service does not concentrate the service of topping and blocking away. That item is not on this particular exhibit. I never operated a compress. I have kept compress accounts to a small extent (R. 4197). I know nothing about the theory of accountancy as to the allocation of cost. In arriving at this particular arrangement for allocating costs, I have considered apart each and every method that may have been advanced, and I believe for practical purposes that this is the fairest method possible. I based that on my experience in the compress office (R. 4198).

Redirect examination:

Those items represent proportionate amount per bale as shown by the total expense of the item on our labor

books. The people I am representing here are in full accord with the views as expressed by Mr. W. L. Clayton, and we adopt his full testimony (R. 4199).

[fol. 916] WITNESS C. B. FOX

I am here to represent the following Steamship Lines: Texas Transport & Terminal Company of Houston; Lykes Brothers, Ripley Steamship Company of Houston and Galveston; Harrison Line, of Houston and Galveston, Leland's Line of Houston and Galveston; Wilkins & Biehl, or (R. 4200) Houston and Galveston; F. Sgitcovitch & Company, Houston and Galveston; United Gulf Steamship Company, Inc., of Houston and Galveston; Tampa Interocean Steamship Company of Houston and G[illegible]eston; Fowler & McVitie of Houston and Galveston; Blakely Smith & Company of Houston; Henry J. Schutte Shipping Company of Houston; S. J. Dougherty and Company of Houston; Strachan Shipping Company of Houston & Galveston, W. J. Binyon, Jr., of Houston. A meeting of these lines was held in Houston June 1st, and it was agreed that in the event any change was made in the present free time limit of ten days that the Steamship Agent would withdraw the agreement that they have signed with the railroad to absorb the demurrage. In addition to all of the Houston lines, named in this list, the lines from Galveston concurred, with the exception of one (R. 4201). That line is the Texas Transport and Terminal Company at Galveston. They were not asked about it.

The 200 foot limit under the rule operated by the Stevedores in loading cotton to the ship is figured from the hatch in which the cotton is intended to go. Speaking for our own Steamship Lines, we run to Liverpool, Manchester, Genoa, and Naples. Before the ship reaches there, we know daily how much cotton we have booked for both places and in what part of the ship it will be loaded, and we give the information to the wharf clerk who designates to the unloading contractor where the cotton shall be placed, and it is placed so as to avoid any excess trucking. When the cotton is trucked to a hatch from a distance beyond 200 feet, you pay 5¢ a bale penalty on it. That 200 feet is

measured by the road the cotton is trucked (R. 4202). It is the nearest route that can be used. If the cotton is placed more than 200 feet from the particular hatch, it is going into, the ship stands the extra expense. If the persons loading the cotton on the wharf should not put it on the [fol. 917] place we designate, and if it requires an extra haul, they would not pay that, except in the case of a private dock, and in that event, if they would not place it where we wanted it, we would bill them for it. We have done that, and they did pay us; There are very few of those docks in Houston where you can get over 200 feet back from the ship. We have never handled a single bale uncompressed out of Houston since I have been there (R. 4203). Our regular contract for shipping requires for high density 34 lbs. to the cubic foot, and for standard density *34 pounds to the cubic foot and for standard density* 22½ lbs. per cubic foot. It provides that if the ship has taken standard density at less than 22½ pounds it may send that cotton to the nearest bill of lading place to be compressed to the required density, and the charges attached against the shipper. There is another provision that you may accept it and bill your charges on the proportionate increase-amount of space that is occupied. We will handle any kind of cotton, but so far as I know there is no regular rate quoted for flat cotton. I have heard of one rate which was quoted to Hamburgh that was double the differential over high density, which would be 30¢ per 100 lbs. (R. 4204). I do not know of any shipments that have been made that way. Practically all of the same steamship lines serve both Houston and Galveston. If cotton is received on the wharf with sample holes open, we take an exception from the people delivering it to us. There is no reason for that, I suppose, except to protect ourselves in case anyone ever comes back on us. We do not put those exceptions on the ocean bill of lading. If there were any pilferage or loss in the cotton, we probably would interpose those exceptions. I do not see why the same rules should not be put into force as to shifting vessels at Galveston as are in force at Houston. The only difference (R. 4205) at Galveston is that there are no compress docks owned by private shippers. The Navigation Commission at Houston controls the allocation of vessels to the Weatherford Crump Docks, and the Weath-

erford Crump people have absolutely no control over that. Practically every commodity that is exported out of Houston moves out over the wharves 7 and 8 there (R. 4206).

[fol. 918] Cross-examination:

In the event our agreement with the carriers is cancelled on demurrage, the shipper would pay for the detention of cars on through bill of lading. It is agreeable with us to have the ten days cancelled if the responsibility for paying the demurrage is taken off of the steamship agent. We will tell the railroad we will not be responsible if it is changed (R. 4207). The railroads will not issue a through bill of lading unless the steamship agent signs the agreement covered by the tariff. On the through bill of lading you never know when the cotton is going to get to the port. You cannot control the arrival date of it, as you can cotton on local lading (R. 4208). The railroads refuse to sign the through bill of lading with us unless we agree to pay the demurrage. It is covered under the tariff. I do not know what the practice is at Galveston concerning trucking 200 feet from the hatch. We do not always get high density cotton compressed to 34 lbs. per cubic foot; there is some argument going on among the steamship agents about that. We accept cotton only at pier #8 at Weatherford Crump's warehouse (R. 4209). We probably have to truck that cotton through lateral trucking more than 200 feet, but it is probably the steamship's fault if we do. We never charge the shipper. We could hardly stop cotton right there and say it would be out of the limit unless we had it at the aft end of the ship and had to fill up this hatch and then had to move it to the forward end of the ship and finish it. We accept cotton at Alexander Sprunt & Son's wharf house to deliver aboard ship. If they did not put the cotton where we told them to, and if we had extra lateral trucking over 200 feet, we would bill him for it. If we were crowded, and had the cotton put at a point where we had to truck it over 200 feet, I would say that was the ship's fault. On the piers at Galveston, you can get a lot farther away from your ship than at Houston. They are wider. You can get 1,100 feet away from your hatch at Galveston (R. 4210). I do not know of any instances where the Galveston Agent has billed the shipper for extra trucking. I

am not familiar with whether they would or not. Exhibit #A-212 is a copy of the agreement that all steamship lines in Houston signed. The wire received from the Vice-President of the Maritime Committee, an organization composed entirely of Steamship Agents, reads as follows:

[fol. 919] "I. M. Griffin, Baker Hotel, Dallas, Texas:

Galveston Maritime Association and Galveston Steamship Agents have not authorized anyone to appear or testify or (R. 4211) represent them at Interstate Commerce Commission Hearing now being held in Dallas.

(Sd.) J. L. Beveridge, Vice-President Maritime Committee, Galveston Cotton Exchange Mart. H. Royston."

Redirect examination:

I have authority from all the Steamship Agents of Houston, and those named at Galveston also gave me authority to represent the Galveston Lines.

Recross-examination:

Mr. Hancock authorized me to represent the Galveston lines. I do not know whether or not he is a member of the Maritime Committee at Galveston. There is only one member of the firm that can belong to the Maritime Committee. His Steamship Company is a member (R. 4212). I understand that every Steamship Company at Galveston is a member of the Maritime Committee.

WITNESS B. N. GRAHAM

I live at Dallas, Texas, and am connected with the service department of the Continental Gin Company of Dallas. My duties in the service department are looking after kicks and complaints on gin machinery in general (R. 4213). My experience with unevenly ginned and pressed bales, which slows down compression by causing the bale to jump out of the compress, is that the rolling bale is produced by lack of adjustment of the speeding device which speeds the cotton into the press box. The press has automatic

trampers, and these may be so adjusted that they will not produce an evenly pressed bale (R. 4214). It requires no additional equipment, except a change in the speed of the speeding device, sometimes requiring a sprocket or a different size pulley. We have had very few complaints and the complaints we do have come from ginners. Our company undertakes to correct and readjust the gins when-
[fol. 920] ever it is called to our attention. It is my opinion that the other gin companies do the same thing. We all maintain service departments. I think the number of complaints have considerably decreased in the last year. This trouble can be practically eliminated (R. 4215). I would say that probably out of 500 or 600 trampers sold during the past year, we may have had 6 or 12 complaints, all coming from the ginners, probably not that many. I think the ginning machinery companies are attempting to co-operate with the compresses in eliminating this trouble as far as possible.

Cross-examination:

I do not know how many of them are operating the machinery without making complaints (R. 4216).

WITNESS J. V. SCOTT RECALLED

Exhibit #A-213 is a photograph of the Alabo Plant at New Orleans. The proposal to build an 800 foot extension to the Houston Compress Company's plant at Long Reach is for the purpose of handling general commodities, building a concrete dock and warehouse adjoining (R. 4217) for the purpose of handling general commodities. The track formerly designated as track #2 has been removed from the warehouse, and the situation is now as represented in Exhibit A-33. Track #1 will be used hence forth for the delivery of cotton to shipside. Track #2 is substantially where the former track #3 was and what was formerly track #2 has been taken up (R. 4218).

WITNESS D. SUMNERS

My residence is at Houston, Texas, and I am Auditor with the Anderson Clayton Company. My Exhibit #A-214

shows the cost of performing various services as allocated between the various services between the Long Reach Plant of the Houston Compress Company. The Exhibit has been prepared under my supervision and is true and correct to the best of my knowledge and belief (R. 4219). I have taken the cost of receiving cotton direct into the warehouse, and the cost of delivering the cars as 9¢ per bale [fol. 921] because there is no practical way of determining the exact figures for the Long Reach Plant, and because this is generally accepted by compress men, as far as I can learn, as the cost of these operations. Ten cents per bale is the usual tariff for loading cars in this operation, is sometimes considered the more expensive of the two (R. 4220). The direct labor cost involved in the 9¢ has been variously mentioned as 4½¢ to 5¾¢. Taking 5¢ as the basis and figuring the proportionate overhead, it produces about 9¢. The items distributed in my statement in proportion to the labor are about 80% of labor, which is 5¢ plus 80% making 9¢. The separation of the services into three general heading on sheet 4 is done on the basis set forth in the preceding sheets of the Exhibit. The first item appearing on the last sheet of the Exhibit is the cost arrived at by dividing the total compress cost by the number of bales compressed, which gives 35.09¢. In the next item is the division of the cost of receiving and delivering, which is included in the statement offered as operation #1. I have taken 9 cents as the cost of receiving cotton direct into the warehouse and of loading cotton to cars. I got the above figures from the records of the Houston Compress Company (R. 4221). The transportation chargeable to compressing and the transportation for delivery to shipside have been divided in proportion to the bales receiving that service; that is the basis of the totals appearing in the allocation on sheet #4. The next item shows the cost per bale of complete concentration service, assuming shipments made by rail. Into that enters the two 9¢ items again, making 18¢ for receiving and delivering, and the item of 27.07¢ is arrived at by dividing the total cost after concentration service, and it is called in my statement by the total number of bales received. That gives a total concentration service cost of 45.07¢ (R. 4222). I have had about 20 years experience in accounting work, with more or less

experience in cost accounting during the greater part of that time. During the first years I was with Anderson Clayton & Company, I did none of that, but later I did. I believe I am thoroughly familiar with the general theory of the principles of accounting. The compress industry performs two services to the same good. Both services together require more labor than would be required for either [fol. 922] alone, but not so much as would be required for both if performed separately. The same holds true for the cost of owning the facilities, though not necessarily in the same ratio. The problem may be approached by stating the theory that compressing for railroads should be charged the full cost which would be incurred if that operation were performed alone, and the saving made by performing both services at the same facility should all be for the benefit of the concentration service. This theory can only be justified when it may be assumed (1) that the services performed for the owner are incidental and of less importance that the services performed for the (R. 4224) railroads. (2) that no more facilities have been provided and would be necessary for compressing for railroads. (3) that the construction or installation of each new facility is determined solely by the need of facilities for compressing in transit in the most economical way.

If it can be established that the facilities are needed primarily for concentration, and that a great part of them are not needed for the most economical performance of compressing in transit, then the full cost of the concentration service when performed alone should be taken as the cost when performed at the same facility where the compressing is performed, and only the additional cost of the two operations above the cost of concentration alone should be charged to the compressing.

Since it appears in this case that the interior facilities are held to be necessary and important to the concentration service, as well as to the compressing service, it is my opinion as an accountant that all items of cost which are incurred for the benefit of both services should be divided between them according as each service makes the expense necessary. As to salaries of Superintendent and others whose duties are in connection with both services, the method followed in (R. 4225) Exhibit A-91 is inconsistent

with the method of dividing or allocating such labor as may be for the benefit of both operations. In the matter of clerical help, it would seem that the service of concentration should require a great deal more than the service of compression. I believe that would apply in connection [fol. 923] with compression in transit as versus concentration and also in connection with compressed versus concentration. I have not kept any accounts on compression in transit. I have had no actual experience with the interior compresses (R. 4227) compressing in transit.

Cross-examination:

The per bale basis should not necessarily be used for allocation. The basis used in allocating cost which cannot be charged directly to the operation should be on whatever basis gives the most accurate results. I have used a per bale basis at one place in Exhibit #A-214. That is where I divided the cost of receiving and delivering between the transportation chargeable to compressing and transportation chargeable to shipside delivery. I did not find any repairs to the buildings in the maintenance of the Houston Compress Company for this year. I allocated depreciation of the building on the basis of the value of the part of the building used in the respective operation (R. 4227). I divided the floor area by taking the dimensions of the plant; the area of the compress room and the area of the warehouse department (R. 4228). On that part of the Long Reach Plant which is used for the cotton department, that is for the compressing of cotton, 14.5% is used for compression, that is 14.5% of the total area upstairs and down stairs. I do not have the figures on the total area of the Long Reach Plant. I did not assign directly any part of the receiving platform to compression, only indirectly (R. 4229). The compress rooms and the boiler rooms, etc., right at the compress, take up 14.5%, not of the total Long Reach Plant, because the Long Reach Industries are for other things than cotton, but of that part which is allocated to the cotton department. In the classification of services in receiving cotton, I have all of the expense of receiving cotton, putting it in storage, taking out of storage and delivering it, and including the transportation by way of the compress. The usual route is for it to go

from the receiving platform to the compress and from the compress to the warehouse department. That includes whatever labor there is in putting it away. I am familiar in a general way with the methods used at the Long Reach Plant of storing by grade and staple (R. 4230). Receiving [fol. 924] includes bringing the cotton to the door of the compress just inside of the compress room, taking it from the compress room and storing it away (R. 4231). It is usually stored away all over the plant so as to have a quantity of bales of grade and staples together, usually in lots of 100 bales. The service of receiving includes the cost of performing that service. The cost of unloading it out of the car and laying it out to be sampled and putting a mark on it that would indicate the grade and staple, so that they can store it away by mark numbers, is taken care of in the third column on page 4, under the head of "Other concentration service." The item of $92,871.25 includes all the service of labor to concentration, except that part of concentration which is the receiving of the cotton and delivering of the cotton. That labor is carried in the first column on page 4 (R. 4234), under the heading of Receiving and Delivering. Receiving includes the labor of taking out of the car and trucking into the warehouse and putting the cotton down where it would rest (R. 4235). As far as I know, none of the cotton is stored away before it is compressed. When it is received, it is routed via the compress (R. 4236). The cost of taking it from the car to the compress is part of the 27.55¢. Then it has to move from the compress into the warehouse compartment and ultimately from the warehouse compartment to where it is being delivered. The 27.55¢ includes that part of the total cost of doing that, which I have allocated to the compressing operation. I have taken the total cost as determined in my statement of moving the cotton by way of the compress into the plant and I have divided it equally bale for bale between the compress and shipside delivery and arrived at the figure of 27.55¢ (R. 4237). In the general way I know something about the physical operation, but not enough to discuss the details of the various movement.

Redirect examination:

The cost of transporting the cotton from the compress to the warehouse is included in the 27.55¢ (R. 4241), a certain

part of it is. I have not considered that all of the movements from cars to the compress and into the store room is chargeable to compressing. I have not attempted to say what is the exact point at which the movement is for com- [fol. 925] pressing and the exact point at which the movement begins for delivery, except in this way: I have considered the total movement as being for the account of compressing, and for shipside delivery equally bale for bale (R. 4242). I am sure that at least one-half of the movement from the compress room to storage is included in the 27.55¢ charge to compress. The item of 27.55¢ for delivery to shipside includes a part of the movement from the compress to the warehouse and all of the movement from the warehouse to shipside. It would include a service analogous to the 9¢ service movement from a point in the warehouse to the car; the 9¢ represents the cost of delivery by one method, and (R. 4243) the 27.55¢ represents delivery by the other method.

Recross-examination:

No part of the fuel and boiler room expense is included in transportation. The item of $6,322.19 for compression is not included in the item of $192,910.00 of transportation expense for compression (R. 4244). No part of the repairs to compress is included in the item of $129,000.00. No part of the compensation and liability insurance of $3,199.00 is included in the $129,000.00. No part of the insurance and watch service is included. None of the other items are included (R. 4245). The total cost of compressing as performed at Long Beach is determined to be 62.64. I calculate it to be $165,460. The item of loading to cars of 9¢ a bale includes cost properly to be allocated to that movement of taking cotton out and loading it into the railroad cars. It means the trucking from some place in the warehouse to the car.

WITNESS F. R. DALZELL RECALLED

In regard to the testimony to the effect that Mr. Womack and Mr. Dorrance are interested in the new water front

plant at Houston, the facts are that Mr. Womack and Mr. [fol. 926] Dorrance are very heavily interested in the Shippers Compress and back of the water front facilities. Their interests in the new Manchester water front plant are very small, only such as any man prominent in his community finds it necessary to take as a matter of civic municipal pride. The firms of which Mr. Womack and Mr. Dorrance are a part will continue to do all of their business at the Ship Compress which is a back from the water front plant. Mr. Womack and Mr. Dorrance have not made nor attempted to influence the policy of the Houston Cotton Exchange in any way. That policy has been arrived at by open meeting of its members at which Mr. Griffin was present, stating his case, and the Exchange decided that they would take the position of the back from the water front man. Exhibit #A-215 shows the names of all of the compresses in Houston, showing whether they are water front or back from the water front plant, with a list of the names of the firms who are concentrated at each one of them (R. 4253). The growth of concentration in Houston is due to the fact that it became a seaport in 1920. The advantages of port concentration are most apparent in case of large organizations like the farm bureaus. The Texas Farm Bureau has been concentrating in Houston for a year or two, and last year they handled 285,000 bales of cotton. The Oklahoma Farm Bureau, which has been concentrating in Galveston, handled there last year about 300,000 bales. That concern is also coming to Houston hereafter and they expect to handle 300,000 or more bales of cotton. They are going into the new Manchester Plant, which will be on the channel (R. 4254). The Texas Farm Bureau is at the Houston Compress Company Fifth Ward Plant, back from the waterfront. The restoration of reciprocal switching in item 52 will not cure the trouble. Item 52, relating to the reciprocal switching arrangement at Houston, when it is restored, [fol. 927] will carry this wording: "Concentration Claims covering shipments handled in acordance with this item shall be filed with the lines performing inbound hauls to Houston." That arrangement is not practicable. It will call for 5 or 6 or 7 claims to be filed with 5 or 6 or 7 different railroads on a car going out with 100 bales which is split up among 5 or 6 or 7 inbound lines. We have to file

concentration claims today when we re-ship to Galveston. The difference is that you are going to make 5 or 6 or 7 different claims to get back $8.10. When you ship to Galveston you are going to get back a refund of 23¢. My objection is to filing the claim. I think the labor and expense of making this claim is more than a man gets back for it. It is unreasonable to require us to make concentration claims to get back $8.10. Its impracticability will result in our not getting it back. We will not in fact have a one rate plan, because we do not want to file the claim on account of its being impracticable. It would be absurd to send out $1.00 in order to get back 60¢ (R. 4257). It would be manifestly unfair for cotton originating upon the Missouri, Kansas & Texas 15 miles north of Dallas to be delivered to the Southern Pacific for line haul to its destination. The same rule is not reasonable at Houston as the revenue has been earned and only a switching service is left. In referring to the switching rate in my previous testimony, and stating that it is not remunerative, I did not intend to be understood as an expert on what it cost to do that, but rather in the sense that I have never heard of any railroad soliciting this switching (R. 4258) business from warehouses to ships, and therefore I assumed that it was not considered remunerative. The Houston Cotton Exchange has been working for something like three years to establish a cheap drayage in Houston. Every day we are getting closer to it. One requirement is the construction of a very expensive bridge [fol. 928] across the bayou immediately above the turning basin. That will enable the coupling of hard surface road on both sides of the basin. When those things are done it will be the purpose of the Houston Cotton Exchange to encourage some one to start something which might be termed an effort on the public carrier dray line; it is possible the Houston Cotton Exchange may do it, our purpose being to get the cheapest possible dray service in Houston (R. 4259).

I am without information as to what the one rate is to be from Oklahoma. If the purpose of the railroads to increase the present 80¢ rate in Texas to 83¢, and reduce the present shipside rate from 83½¢ to 83¢ is applied to the rates from Oklahoma, which are $1.01 for local delivery and $1.04 for shipside delivery, the results would be that the local delivery rate from Oklahoma will become $1.04 and the shipside rate

from Oklahoma would become $1.03½¢ making a lower rate for shipside delivery than for domestic delivery. If it is the intention merely to increase the $1.01 rate without any corresponding reduction in the shipside rate, that may make a very material difference in the net revenues that would result from the one rate plan (R. 4260).

During the present season, the firm represented by Mr. Griffin put as much as 10,000 bales of cotton on ports ship-in Houston, the total handled through the port at Houston being approximately 2,000,000 bales. I have no absolute source for that information (R. 4261). I get it only by observation. Mr. Griffin has failed to furnish the exact figures. If it is incorrect I will be glad to have Mr. Griffin put in the correct figures. In my opinion they have not put as much as 10,000 bales through Houston. I watch the movement of cotton through the port of Houston. I am in Houston all [fol. 929] the time, and come in contact with a great many people there and in a general way I know what is going on (R. 4263). I am Secretary of the Houston Maritime Committee. I do not have the right as such to examine the loading of the ships (R. 4264). I know in a general way the movement of the various members of the Houston Cotton Exchange through Houston. I consult with various members of the Houston Cotton Exchange from time to time as [fol. 930] to the handling of their cotton through the port of Houston. I know who are the larger operators of export cotton among our members, but that does not mean necessarily that I keep up with the members. I have no absolute personal knowledge of what Mr. Griffin's firm would actually book through the port of Houston (R. 4265). I would not know whether it was 7,000 or 9,000 bales, but if it was a couple of hundred thousand I would be pretty likely to know it. I would not know if it was 225,000 or 200,000.

In regard to Mr. Thornton's suggestion that the rates should be first made by inclusion of the wharfage charge as in effect at Galveston, and that rate be swung around to all ports, regardless of what the amount of wharfage might be at these other ports, I call attention to the fact that at Houston we have a barge line that makes delivery of cotton from water front plants to ships, the cotton being swung from the water side but not actually passing over the wharf. The wharf companies make a charge of 1¢ per 100

lbs. where they charge 2¢ for movement over the wharf. Under no circumstances would we want, even if the one rate plan should be adopted, to have a water front rate at Houston which was made up of the barge service, as high as the rail delivery rate, which is made of a 2¢ wharfage charge (R. 4266).

Mr. Reed's Exhibit #A-189 makes it perfectly clear that the carriers under the proposed 83¢ one rate plan will not make any net gain at that point. I believe the exhibit rather shows that as to Galveston the carriers will require more even than the present 83½¢ rate to keep their revenue intact. At Houston, on the contrary, there is a very large quantity of cotton going in now at 80¢. If the one rate plan should be adopted, it can only be because the Commission concludes that Mr. Thornton's allegations about there being no expense in delivering cotton from water front compresses to shipside are true. It naturally follows that they must refuse to consent to any allowance being made to those plants. Therefore, an increase over the present 80¢ rate to Houston on that larger proportion of cotton that goes into the water front plant would be a net gain. For [fol. 931] that reason, we think that in the event the one rate plan is ordered the figure at Houston should be considerably less than 83 cents (R. 4267). In any event, it should be lower than the new rate at Galveston, at which point there will be no net gain to the carriers from the 83 cent rate.

Mr. Griffin, Exhibit A-136, quoting testimony given by me in I. & S. 1641, shows that testimony in a form which is considerably garbled. It refers to a stock market, and I don't know anything about stock markets. There are unintelligible and meaningless sentences. I do not know whether the errors were made in the copies from the record or whether they were made by the reporter at the time the records were made. It is also incomplete in that there is no explanation here as to what was involved; the thing involved was the proposition on the part of the carriers to establish rates on through flat cotton from Louisiana points to Houston, which would be 18 cents per 100 pounds higher than the compressed in transit rules. A large majority of cotton from Louisiana coming into Houston would not pass a compress at all, and that particular point was regarding

this proposal to add 18 cents for passing the (R. 4268) compress as being an unreasonable imposition. The advice letter No. A-131 of the Houston Cotton Exchange Traffic Department, reproduced as Exhibit A-148, was simply a hasty resume of what appeared to be the probable effects of the first decision of the Interstate Commerce Commission in Docket 14940, and was distributed to the members for the purpose of provoking discussion and consideration of the matter with the idea that in that way we would best be able to get a proper conclusion as to what the course of the exchange should be.

Exhibit No. A-149 is a copy of my testimony in Docket 14346. In that case the carriers tried to set up a vast amount of indirect service which they were *were* forced to perform on cotton as a justification for the rates which we alleged were too high. The testimony that I gave, and which is reproduced in this exhibit, shows that we hold a large part of that indirect service was undertaken by the [fol. 932] carriers voluntarily and for that reason the indirect service allocation they made was not entitled to much consideration.

Exhibit No. A-167 is a copy of a letter which I wrote to the Railroad Commission of Texas on August 16th, 1920. At that time there were pending two proposals, one to increase the charge (R. 4269) for compressing from 15 cents to 20 cents, and another to increase the freight rate 35 per cent. The purpose of my letter was to ask the Texas Railroad Commission, if they decided to increase the rate 35 per cent, to make provision for a corresponding increase for the amount of compression that would be absorbed, so that we might not find ourselves in the position of having a freight rate increase of 35 per cent and in addition to that an additional 5 cent unabsorbed compressing to pay.

Exhibit A-150 is a copy of a brief on file by Oklahoma Cotton Growers Association and the Houston Cotton Exchange. The brief states: "We adopt the statements in the brief of the Missouri-Kansas-Texas Lines in pages 1 to 5 inclusive" (R. 4270). That brief is not attached so there is no statement. In 1910, as a result of certain changes in the long and short haul law it became necessary for the carrier to file blanket application for relief from Fourth Section violation. There were some applications filed to

continue rates on cotton from Oklahoma to Southeastern milling points via all routes that had been previously open, and that application remained pending until some time in the year 1924 or 1925, when the Interstate Commerce Commission finally called it up for hearing. It involved the closing of many routes, and the carriers at the first hearing, rather let the thing go by default, with the result that a tentative report was put out by the Interstate Commerce Commission by which it recommended the closing of all of those routes, leaving the rates applicable only by the short route, which I think was through Memphis. When that tentative report appeared, the Railroads and the shippers began to take notice. We held a meeting in Dallas, attended by Mr. Pointer and one or two others, of the Oklahoma State Cotton Exchange, representative of the Dallas Cotton Exchange, Galveston Cotton Exchange, and the Houston Cotton Exchange. We met with the Railroads and [fol. 933] it was decided that the Railroads would make an application for re-hearing of the case, and that the shippers' representatives also would make application separately for rehearing. Mr. Pointer (R. 4271), worked with us in getting up that application for rehearing. We got a rehearing and all the interested Railroads appeared at that time and asked for relief which would permit them to continue all of those routes. The shippers' representatives, Galveston, Dallas, and Houston, similarly appeared, asking for continuation of all the routes. At that time the Oklahoma Cotton Exchange reversed its position and stated that in their opinion the warehouse facilities in Oklahoma were sufficient and that there was no necessity for any route through Texas to the Southeast. We had been handling Oklahoma southeast cotton through Houston for a good many years, certainly more than 15, and the carriers in this state appeared before the Interstate Commerce Commission asking that those rates be continued in effect, and we saw no reason for opposing the wish of the carriers. On the contrary we had some reason for supporting the maintenance of all of these routes, and we did support the application.

The storage capacity of the Shippers Compress Company is 60,000 bales, and the track room is 80 cars (R. 4272). The storage capacity in Houston, including an estimate of 100,000 bales which is the New Manchester plant to be ready

by September 1st in round figures is one million bales, and these various plants have track room for 819 cars; that does not include the plant of the Southern Compress & Warehouse Company, which is Mr. Griffin's compress, and as to his figures I am not informed. The ship's berth space is, at the turning basin compress, which is really a municipal wharf, two berth spaces, at Long Reach, 4 berth spaces. At the new Manchester Terminal there will be three ready by September or October, and the City Service have berth spaces for 15 additional vessels (R. 4273). The Maritime Committee of the Houston Cotton Exchange does not keep any record of the shipments of various shippers [fol. 934] from the port. The statements I made concerning shipments was simply an expression of opinion without any absolute information.

Cross-examination:

I understand that at New Orleans there is no wharfage on cotton going over the Illinois Central dock, and only 75/100 of a cent per 100 pounds on cotton going over the City Front dock. You get from Shreveport to New Orleans on a freight rate. When you get to New Orleans, you are within 75/100 of a cent of shipside. In that case I do not think the rate to shipside should be any more than the Railroad freight rate plus the cost of getting to shipside. In the other cases, where the freight rate takes it to shipside on the Illinois Central, there should be nothing further added (R. 4275). I am not in favor of a lower rate from Shreveport to New Orelans than from Shreveport to Houston because of the lower wharfage at New Orleans than at Houston; if the Railroad Lines make a freight rate from Shreveport to New Orleans within 75/100 of a cent of shipside, then the shipside rate should not be any greater than that additional 75/100th of a cent to New Orleans. I would never be willing to pay a higher rate to shipside at Houston because of the difference in the wharfage at Houston versus New Orleans (R. 4277). My testimony has been throughout that the first decision was particularly harmful to the back from the waterfront man. I do not know whether the water front man has an advantageous location which should be recognized in the freight rate adjustment. I have not testified to that effect (R. 4278).

WITNESS E. H. LOCKENBERG RECALLED

Exhibit No. A-216 reflects the total and per bale cost of the public cotton warehouses of the Board of Commissioners of the Port of New Orleans to compress 425,905 bales of cotton for the period of 12 months, August 1st, 1924, to July 31st, 1925, of which 60,567 bales, or 14 per cent, were standard compressed and 365,339 bales, or 86 per cent were high density compressed. The labor expenditures of the [fol. 935] warehouse are allocated each day, in accordance with the various services that we perform, as shown in our tariff. As an illustration, the first item in our tariff is receiving against which we apply all items of cost for performing this service, the same being true of compressing and every other service which we perform.

The exhibit contains the same expense items as shown on page 1 of exhibit A-91 introduced by witness Brillhart, except the following:

1. Twine, under the heading of "Supplies."

2. Insurance on transit cotton.

3. Taxes, state, county, city, etc.

4. Trade dues, as shown in his item 14.

5. Extraordinary expenses, such as flood, fire, or unavoidable losses.

In explanation of these items, which are not included in exhibit I advise as follows:

1. Twine is included in our patch account, which accounts for same not being included in our cost of compressing.

2. We have had no occasion to compress transit cotton for account of the carriers, therefore, we have incurred no such expenses.

3. The public cotton warehouses are owned by the State of Louisiana and operated by the Board of Commissioners of the port of New Orleans, an agency of the state and, therefore, are not subject to assessment of any taxes whatsoever.

4. I made exception relative to the item of "Trade dues" for the reason that I know of no expenses so described in-

curred by the warehouse I represent. The Board of Commissions of Commissioners of the port of New Orleans contributes to the support of various commercial organizations, and these items of expenses are included in the general administration charge against the warehouse, a proportion of which administration charges I had included in the exhibit as properly chargeable to our compressing cost.

5. Under the item of "Extraordinary expenses," I know of no expenses incurred by the public cotton warehouse for the period covered by the exhibit.

[fol. 936] A daily distribution is made of all labor costs, allocating same to the various services we perform. The exhibit does not include any cost of unloading cotton from cars or reloading same into cars. These items of cost, however, are correspondingly offset, due to the fact that our cost of compressing includes the trucking of all cotton from any part of our plant to our compress room, the dis-ance to truck cotton, in many instances, being as much as 2,000 feet.

In figuring depreciation on these items we used 1 per cent on buildings and machinery and 10 per cent on equipment. Our buildings are reinforced concrete and the item of machinery represents our compresses, which are the high density type, and were purchased from the Webb Compress Company in 1917. I have refigured depreciation on basis of 2 per cent on buildings and 4 per cent on presses, which will increase cost per bale of compressing .015 per bale.

Of the 425,905 bales compressed by us 365,338 or 86 per cent, were compressed to high density. We estimate that we can compress about 15 per cent more cotton to standard compression in the same period of time that it requires us to compress to high density compressing. Using this as a basis, had the entire 425,905 bales been compressed to standard compression we would have effected a labor saving of .0220 per bale. The usual number of bands placed on standard compressed cotton is 7 bands, and on high density compressed cotton 9 bands. Using these figures as a basis, it required 3,712,011 bands to compress the 425,905 bales, or .0098 per band. Allowing for an excess of 2 bands on 365,338 bales compressed to high density compression, we used 730,676 bands in excess of our requirements for

standard compress cotton, and on basis of .0098 per band, this amounts to $7,180.62 and figured on basis of 425,905 bales, would have effected a saving in band making of .016 per bale.

The total cost per bale for compressing, as shown on his exhibit is .5046 per bale. If you will add to this amount the additional cost per bale of .0150, which is obtained by in-
[fol. 937] creasing the allowance for depreciation on buildings and machinery, it will show our cost of compressing to be .5196 per bale, and if you will deduct from this amount the saving in compress labor of .0220, which would have been effected had all bales been compressed to standard density, also the saving in band making of .016 per bale had all bales been compressed to standard density, it will show our compressing cost to be .4816 per bale instead of .5046 cents per bale, as shown in his exhibit. We figure the average cost of trucking cotton around our plant is about 8.75 cents. The total cost of 48.16 does not include the one element on transit cotton, for instance, of unloading from the cars and loading outbound in the cars.

I do not believe that any comparison would be fair unless we take into consideration the cost to the interior press of twine, which is an item of compress expense, and also the taxes and transit insurance, and also the volume of business, because that plays a very prominent part in the depreciation. I figure the cost of twine would be about 6 mills—about half a cent or 6 mills per bale, and the taxes would be about .6 cents per bale, and the transit insurance in the neighborhood of about 1 cent. We have a class A construction and that would be a half a cent per bale on the valuation of $100,000. Those amounts probably should be added to the figure I have given of 48.16 cents. That would be a total of 3.2 added to 48.16 cents, making 51.36 cents. I consider that the figures shown on exhibit A-216 with the additions and deductions I have made and shown all of the costs which could properly be charged to compression of cotton at our plant.

[fol. 938] Cross-examination:

The cost for trucking cotton from the point from where we commence to figure our cost of compression to the compress room is about 8.75 cents per bale. My Company

would compress cotton to standard density and load it back in the cars at 60¢ a bale; we have an item in our tariff that so provides. We are very seldom called upon to do it. We will restore the marks if they are off, but if there has to be a change in marks the Cotton Exchange would mark them. They would make a charge for that (R. 4286).

Witness S. E. Walker Recalled

The jumping of an unequally pressed bale of cotton out of the press when it is being compressed to standard density can be prevented to some extent by the cotton being set right in the press and by the tiers and bandshovers putting their feet in it and holding it straight as it goes up. There is some danger in that, but a man familiar with his work is not likely to get caught. He does not put his feet in the press; he puts it on the cotton (R. 4287). You cannot always detect a roller bale when it comes off of the tie press. We can sometimes, when it jumps to a certain extent in the tie press. I started to work for the McGregor Press 7 years ago, and I am 29 years old now (R. 4288).

Witness J. V. Scott Recalled

Cotton which has been concentrated in the interior, assembled in an even running lot and ready for export and shipped to our facility at Long Reach to be high density compressed only and moved to shipside would be unloaded on our receiving platform at the Long Reach Plant and trollied to the press room and pressed and trollied to the steamship berth. We would keep a record of such movement so that it could be determined how much of that character of movement we had as contrasted with other movement. We have had some of that business. The compress [fol. 939] knows nothing about the freight charges on that character of cotton (R. 4289). Our charge for that service would be 75¢. That would include the unloading of the car. That would be cotton that we handled for owners other than Anderson, Clayton & Company. It would not be a very

large proportion of the cotton that is loaded on vessels at our facilities. We can supply the number of bales (R. 4290). To the warehouse back of the tracks it would also be handled by trolley. We could load cotton out of the warehouse directly to Track No. 2 or Track No. 3, as designated on Exhibit A-233. The cars would be spotted near the cotton and the cotton would be trucked to the car and loaded from either warehouse. We hand-truck the cotton to the car, and we load from 75 to 100 bales in a car. We usually have that number of bales in one lot in one place in the warehouse under our method of storage. It would be the simple operation of moving to the nearest car point, practically.

Cross-examination:

We use our trolley system to some extent in loading cars (R. 4292). We can always find a car right beside the section of the warehouse where we have to load out, that is during the rush part of the cotton season. If it is not there, we can have the engine switch it there. We hand-truck a good deal of that. Hand-trucking it from the same section to the ship's berth right opposite that section would be a good deal longer haul, and you cannot put the ship opposite the cotton, whereas you can put the cars opposite the cotton (R. 4293).

By Mr. Reed:

Q. Tell me what the difference would be; say the same bale of cotton is sitting right in the center of section 3, and in one instance you want to go to this platform and load [fol. 940] it in the car and in the other instance you want to go to the berth and load it on a ship. What is the difference in the operation?

A. Well, here is the difference: In the first place, we could not store enough cotton in here to supply a ship.

Q. I am talking about one bale of cotton.

A. We do not handle it that way. If we had only one bale to move we would have to put it in the ship's berth at a place selected by the steamship clerk. It depends on which hatch it is going to. The only difference in handling the two operations if we were going to hand-truck it would be that the steamship clerk designates the berth to which we shall put it and we are not so restricted as to the car when

we load it in the car. We top some of the cotton in the car. I do not know about the cost on moving the bale to the ship's berth and on moving it out to the car (R. 4297).

[fol. 941] WITNESS J. T. STOCKTON, JR.

My exhibit No. A-217 takes certain lines of Railroad and shows the distances between compress points in certain portions of the cotton section, as reflected by the Compress maps introduced in this case known as Exhibit A-66. I have applied to those compress points the point of production that would be tributary to those points, as shown by the cotton production map. In preparing the exhibit, I used exhibit A-60 which is a map showing the rail lines, compress points, and the production for five years by specific counties in the states of Texas, Oklahoma, Arkansas and Louisiana. As to the selection of the Railroad, no particular line was selected. I can offer no explanation for picking these lines which I have shown in this exhibit other than they were the ones that first came to my mind. The second sheet, deals with the Ft. Worth and Denver City Railway. I picked an area on that Railroad where there were a number of compress points and substantial production of cotton. This is just an elaboration for a part of the territory and line covered by Mr. Moore's exhibit A-151. The distribution of counties was figured on the basis of the geographical location of the compress points in direct line of Railroad haul, that is, taking into consideration the smallest amount of back haul. This, however, is purely an estimate on my part and I cannot state that the amount shown as the approximate amount available in the territory contiguous to each compress point would be the exact number of bales that were compressed at the compress. Where there are two compress points 45 miles apart, and a station 20 miles from one and 25 miles from the other, I would assume that the cotton from that station would move to the 20 mile compress point instead of the 25 (R. 4299). I would make that assumption regardless of whether it was back haul or not. I have divided a certain county between two compresses in dividing the area. Some of these compress points are also served by other lines than the one I

have shown. I have not undertaken to make any segregation as to that, except that where the compress is located on two lines and I have selected those two lines, the com- [fol. 942] press point is shown in the exhibit as against both of the lines. On page 3, on the Missouri, Kansas & Texas of Texas, the area extending from Garland, 16 miles North of Dallas, to La Grange, which is 258 miles south of Garland, is a rich cotton producing area; those points are served by other railroads (R. 4300). In making the allocation, I have just allocated the territory and used for convenience the Missouri, Kansas, Texas Line to show the location of the compresses.

Cross-examination:

I did not give any consideration to the county through which a railroad is not operating in the compilation of this exhibit. In some instances, however, I have considered territory adjacent to the railroad with a possibility that some of the cotton might be hauled in by wagon to those compress points. At Vernon, Texas, shown on page 2, I did not take into consideration any part of Ford County, because I thought the cotton in this territory would have been handled by the compresses located at Quanah or Chillicothe. The same thing will apply all the way through the exhibit (R. 4301). The table of distances was taken from the official railroad guide.

Mr. Fullbright: Mr. Aston was asked the question at Houston by Mr. Reed if there had been any changes in the (R. 4302) plat of the Turning Basin Compress Company since the last hearing and he replied "No." He wants me to state that there had been an additional high density compress put in, which is shown in his exhibit, that was not there at the time of the former hearing. I am also authorized to state that Weatherford, Crump & Co. endorsed the position as taken by Mr. Clayton in this proceeding.

MR. J. K. MOORE RECALLED

I have examined Mr. Fullbright's exhibit A-206 (R. 4303). I was formerly employed in the accounting department of [fol. 943] the Corporation Commission of Oklahoma, en-

gaged in the preparation and analysis of statistics, and I think I am familiar with all of the various details of the Railway accounts of cost. Mr. Fulbright's exhibit A-206 was not made in accordance with the method of Witness Morrissey in Exhibit A-86 or exhibt A-87. In Exhibit No. A-206, if you will take the distance from the compress point in Example No. 1, 411 miles, and multiply that by the excess gross ton miles, represented in the 12 additional cars required to transport the cotton to the port, you will have the excess cost represented in the additional gross ton miles. My Exhibit No. 218, concerning this cost study, was prepared by me and is true and correct to the best of my knowledge and belief (R. 4305). I have analyzed Mr. Fulbright's exhibit No. A-206 and find a number of fatal errors. First, no charge is made for the expense of returning the excess empty cars from the port. In computing the expense, Mr. Fulbright has applied the expense per gross ton mile for both loaded and empty cars to the loaded car movement. Assume that the Texas & Pacific had three billion gross ton miles with an expense of nine million dollars, or $3.00 per 1,000 gross ton miles. Assume that one billion of this three billion gross ton miles was represented in empty cars, leaving two billion gross ton miles for the loaded car miles. We would have the same expense to be divided by only two billion gross ton miles instead of three, and the expense of one thousand gross ton miles of loaded cars would be $4.50, and if no account is to be taken of the empty return movement, the expense of $4.50 should be used instead of $3.00. This would not be entirely proper, for the per cent of empty return movement from the port is greater than the average for all traffic. Therefore, it would be more proper to make allowance for the empty return movement on 75 per cent. of the excess loaded cars. On exhibit No. 218, in the first example on 1, I have worked out the saving per bale for distances 175 miles, and each additional 50 miles to 625 miles, and have also shown the saving for 1,250 miles (R. 4306). I have used 540 bales, 20 cars for the flat movement, [fol. 944] and 8 cars for the compressed movement, making an excess of 12 cars. I have added 75 per cent tare weight of the 12 cars, which would be eq-ivalent to nine cars, or making a tot-l of 21 cars, which would weight, tare, 420 tons, which is shown in the first column in each calculation.

Mr. Fulbright assumes that there would be the same cost per gross ton mile for handling cotton as for the average of all commodities. This assumption ignores the difference in length of haul for the various commodities. He also assumes the same cost per gross ton mile for a short haul as for a long haul. It is an almost universal principle that as the length of the haul increases, the cost per unit of transportation, either net ton mile or gross ton mile, will decrease. That has been entirely ignored by Mr. Fulbright, and, of course, I have also ignored that in all of my computation here. He also ignores the fact that many commodities move very largely over main line in thru train while cotton moves from every local station in the territory on both branch and main line. Mr. Fulbright omits taxes altogether (R. 4307). If all the Southwestern cotton moved flat from point of origin to destination, a vast additional number of cars would be required, additional platforms would be necessary, additional passing tracks would have to be built, and on some of the roads a considerable double trackage would be required, or a very much heavier expense per gross ton mile would be required to handle the cotton movement. All of these things should be carefully considered. Mr. Fulbright assumes in the use of his five examples that average movement of cotton in the areas here involved from point of origin to final destination is only 311 miles, a very violent assumption. He assumes the average distance from point of origin to compress point is 51 miles, another violent assumption in view of our exhibit No. A-151. Exhibit A-151 shows the average distance between compresses to be 57 miles. He therefore assumes that on an average cotton originates only six miles from the more distant point and moves (R. 4308) 51 miles to the next compress for compression. In computing the saving in expense on [fol. 945] the gross ton mile basis, loaded car basis, or loaded and empty car basis, it is not necessary to make a complicated computation. On my exhibit A-218, I have simply used the excess gross ton miles represented in the movement of the flat cotton over compressed cotton in Example No. 1. On this basis, it is not necessary to compute the distance into compress point as the same number of cars would be necessary up to compress point whether com-

pressed or moved flat to final destination. In basis No. 2 on sheet No. 1, of Exhibit No. 218, I have computed the saving on the basis of the expense per loaded car mile, using only the 12 excess loaded cars and omitting any expense for the empty return movement. A very different result is secured. There are many items of operating expense which are not affected by gross ton miles. Maintenance of cars would be more affected by the car miles than gross ton miles. This is true as to repairs and depreciation of locomotive, and in fact practically every item of expense for maintenance of equipment. Many items of transportation expenses are not affected by gross ton miles, but more by car miles.

The computation on the basis of expense per loaded car mile assumes the same cost per car mile of cotton as all other commodities, and I do not contend that it reflects the actual additional expense of moving flat cotton. Neither does the gross ton mile basis, and neither does the use of expense per loaded and empty car mile basis. These bases do reflect the apparent approximate additional expense, but consideration should be given to many other factors, such as the saving to the carriers on account of compresses loading City cotton and furnishing facilities for the receipt and handling of such cotton. The vast expenditures for additional facilities and equipment which would be required to handle cotton flat should also receive careful consideration. On Exhibit No. A-218, example No. 3, I have made a computation on the basis of the excess weight of the 12 loaded cars to the port, that is, the tare weight, and have added thereto 75 per cent. of the excess cars, making a total of 21 cars for the distances and have applied thereto the [fol. 946] average freight operating expense per loaded and empty car mile in the Western district for the year 1924. On Example No. 2, I have used the average freight expense per loaded car mile in the Western district for the year 1924. I had to do that because there were no other figures available on which this computation could be made. It is my opinion, based on long experience in analyzing figures in the Western district and Southwestern region, and for the various Southwestern states, that the expense so shown for the Western district is somewhat lower than the expense which would be incurred by the lines in the cotton producing

territory here involved. I have set out here the saving based on 1,250 miles under example No. 1, $3.45. That shows the effect of using the same gross ton mile expense for the longer hauls. Just as this expense for the longer hauls is apparently too high, so is the expense for the shorter hauls too low, because you are applying an average cost per gross ton mile to your shorter and to your longer haul. In Example No. 2, the saving amounts to $5.25 per bale. We know that to move this cotton flat would require this additional number of loaded car miles. We do not contend that this reflects all of the expense. It does not, and it does not take into consideration all of these other conditions. Mr. Fulbright ignores the fact that the carriers' records show that 700,000 odd bales of this cotton from Texas moved beyond Houston to the Southeast and New England, to the extent that he shows an average movement of 311 miles on the five examples. This cotton originates down here and is compressed in transit. Lots of that cotton moves to New England, 1,800 miles from Texas and Oklahoma. It moves to New England by water and rail via the New England ports (R. 4312).

[fol. 947] Cross-examination:

In the latter case, the gross ton miles via the water and rail route, the Morgan line, should be given consideration. I did not attempt to make any such computation.

Examiner Money: At what points should cotton move flat?

Mr. Fulbright: Cotton should move flat unless the saving is as great as the cost of compression. According to the first example on Exhibit A-218 that would be about 325 miles.

These examples do not include per diem for the cars while in use, except that the maintenance of cars is in-
[fol. 948] cluded in the operating expenses. You would have a great many additional cars if you had to keep this cotton moving flat. In the Fall season, when cotton is moving, is when the cars are most valuable to the carriers. I have known times when cars have been worth $25.00 a day to a given carrier. That was in 1906, I believe (R. 4314). At competing points, if a shipment were offered that pro-

duced $400.00 revenue, and a carrier did not have a car to furnish for it, I think that the carrier would lose $25.00 of that revenue on that shipment. In the first example, I took the 420 excess gross tons and multiplied by the distance to get the excess gross ton mile. I do not repudiate my testimony on direct examination that the gross ton mile method is about the most accurate method to determine the cost. I think it was not accurate, that there were a lot of conditions that it did not take into consideration. I also say that that condition exists in your expense per loaded car mile (R. 4315) and your expense per loaded and net car mile. The gross ton mile theory, based on all operations, would include a pro rata of the expense assignable to this traffic, as well as omit certain features upon which there is a heavier expense than on this traffic. The average loading of revenue freight in this Western district is approximately 21 tons per car. If you reduce that average loading to six tons over night, you are going to have a greater cost in performing that service (R. 4316). I do not know *know* how many additional facilities have been required under the provisions of the Texas tariffs, under which cotton may move flat from Texas points to Houston and Galveston. I could not say whether or not the operation of that tariff for years in Texas operated to hinder the development and construction of compresses to compress cotton. I am not familiar with the compress business or the marketing of cotton, or the conditions which brought about the building up of these compresses in Texas and the providing of facilities at interior points for cotton. The cost of operation based on loaded car miles and based on loaded and empty car miles was, two or three years ago, somewhat higher in the Southwest than it was for the Western [fol. 949] district. I believe that is still true. I do not have any figures to show to what extent that is true (R. 4317). The question whether I think there should therefore be a higher rate level in the Southwest ignores the lower cost of construction and a good many other factors that would enter into the total net and the base rate of the base for income. In connection with the use of the road shown on Mr. Fulbright's Exhibit No. A-206, there are a number of other roads in this territory which handle a sub-

stantial volume of cotton, such as the Orient and Ft. Smith and Western, the Kansas, Oklahoma & Gulf, and the Texas Midland, which have a very materially higher cost per gross ton mile than the road here shown. I think the Orient originates quite a bit of cotton. It operates through cotton territory for approximately 250 or 300 miles of its length. Altus, on the Orient, is one of the largest shipping points in the territory (R. 4318). I do not consider the Orient a proper example to use; no more than I would consider the Gulf, Colorado & Santa Fe. They are two extremes. 80,000 bales originated on the Orient in 1924 probably would not make any substantial difference, considering the five million bales handled by all lines. Neither would the 48,000 bales originated on the Kansas, Oklahoma & Gulf, but that overlooks the fact that the total of all of their traffic has been thrown in. The total of all of their traffic would be as much as one per cent of the Southern Pacific Line's traffic in Louisiana (R. 4319).

[fol. 950] IN UNITED STATES DISTRICT COURT

In Equity. No. 310

ALEXANDER SPRUNT & SON, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

STIPULATION RE STATEMENT OF EVIDENCE

It is hereby stipulated by the parties, including the intervenors, acting by their respective counsel, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

1. The within and foregoing statement of evidence is a true and correct transcript of the stipulations and statements of counsel made, and the affidavits and exhibits introduced at the trial of said case, and contains a correct transcript in narrative form of all the oral testimony of the witnesses introduced at hearings before the Interstate

Commerce Commission in the proceedings styled Weatherford, Crump & Company, Complainants, versus Abilene & Southern Railway Company, et al., Defendants, Docket No. 13991, and Application of Rates on Cotton to Gulf Ports, Docket No. 14940, as the same is contained in the official typewritten transcript thereof on file with the Commission, a copy of which, duly certified by the Commission, was offered in evidence by the plaintiffs in the District Court in the above entitled case, which, with the exhibits referred to therein and the verified bill of complaint with Exhibits A, B, C, D, and E thereto and Exhibits 1 to 17 offered before the District Court, was all the evidence offered by any of the parties on said trial in the District Court.

2. The said narrative of the oral testimony shall be sub-
[fol. 951] stituted for the original testimony of the witnesses so certified by the Interstate Commerce Commission offered in evidence as aforesaid and shall have the same force and effect on appeal as the original testimony.

3. The exhibits contained in the transcript so certified by the Commission together with exhibits filed before the District Court shall stand as original exhibits and shall be transmitted on appeal instead of transcripts thereof; and the original of said statement of evidence together with this stipulation and the order of the Court pursuant hereto shall be likewise so transmitted.

R. C. Fulbright, Counsel for Appellants. Elmer B. Collins, Special Asst. to the Attorney General, for the United States of America; J. Stanley Payne, Solicitor for Interstate Commerce Commission; A. L. Reed, Counsel for Arkansas Cotton Trade Ass'n et al.; C. B. Cochran, Counsel for Oklahoma State Cotton Exchange, Counsel for Intervenors, Appellees.

[fol. 952] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING STATEMENT OF EVIDENCE

On the written stipulation of the parties it is ordered that—

1. The within and foregoing statement of evidence in narrative form shall be, and the same is hereby, approved.

2. All exhibits in their original form as they are included in the transcript of testimony before the Interstate Commerce Commission in its Docket Nos. 13991 and 14940, certified by the Commission and offered in evidence herein, and the statement of evidence in narartive form together with the Exhibits filed at the hearing in this court, shall be incorporated in the record. They contain all the evidence submitted to this court on the hearing of this cause, and shall be transmitted by the Clerk of the District Court to the Supreme Court of the United States in lieu of the certified copy of the record of the evidence in the proceeding before the Commission.

J. V. Hutchins, Jr.

[fol. 953] Clerk's certificate to foregoing transcript omitted in printing.

[Endorsed:] United States District Court, Southern District of Texas, Houston Division. Alexander Sprunt & Son, Inc., et al. vs. United States of America et al. Certificate as to Original narrative of proceedings, Vols. 1 and 2.

[fol. 954] In Supreme Court of the United States

Dated Dec. 17, 1928.

[fol. 954] In Supreme Court of the United States

Statement of Points Relied Upon by Appellants in This Appeal Attacking the Legality of the Order of the Interstate Commerce Commission Entered April 4, 1928, in the Proceedings Entitled "Application of Rates on Cotton to Gulf Ports," Docket No. 14940, and "Weatherford, Crump & Company vs. Abilene Southern Railway Company et al.," Docket No. 13991 (100 I. C. C. Reports 169, 123 I. C. C. Reports 685), and on Appeal from the Action of the Court in Refusing to Enjoin Such Order—Filed Jan. 15, 1929

1. The order of the Commssion is void because the Commission had no authority to order the carriers to increase the rates on cotton applicable to shipments of appellants,

in a proceeding where the Commission found and ruled that the measure or reasonableness of the rates was not in issue, nor without a full hearing being afforded appellants upon the reasonableness of such rates, nor without substantial evidence to justify such order, particularly in view of the fact that the Commission had previously found such rates to be the maximum reasonable rates.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 1, 9, 10, 11, 12, 13 and 14 filed in the record herein.)

2. The order of the Commission is void because it undertakes to equalize commercial conditions as between the locations of warehouses of different merchants and shippers [fol. 955] using same, and to regulate commercial conditions and economic advantages by rate adjustments, thereby depriving appellants of the benefit of their natural location and advantages and of their property,

(Under the foregoing proposition reference is made to Assignments of Error Nos. 3, 38, 41, 42, 44 and 47 filed in the record herein.)

3. The order is void because there is no substantial evidence to support the finding of unjust discrimination between appellants and uptown and interior warehouses and shippers owning and using them upon which the order is based.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 2, 15, 16, 17, 31, 34, 36, 37, 40, 43, 46 and 48 filed in the record herein.)

4. The order of the Commission is void because it is based upon a finding of unjust discrimination between uptown warehouses and the so-called waterfront warehouses and the shippers owning or using such facilities at the respective destinations, whereas, exactly the same rates applied to both classes with substantially the same service, and there could therefore be no unjust discrimination.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 2, 43 and 46 filed in the record herein.)

5. The order of the Commission is void in finding unjust discrimination between the local domestic rates and the

export shipside rates to the respective ports and as between the shipers using such rates, for the reason that the two bases of rates were available to all alike and used by complaining shippers as well as appellants, one applying [fol. 956] on export or foreign commerce and the other upon local or domestic commerce, and there could therefore be no unjust discrimination.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 15, 16 and 17 filed in the record herein.)

6. The order of the Commission is void because the Commission has no power to prescribe a specific rate to remove discrimination, except in cases where the measure of the rate is in issue or where there are shown to be competitive conditions existing between carriers justifying the use of the minimum rate-making power, and none of such matters were in issue in this proceeding.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 51 and 52 filed in the record herein.)

7. The order of the Commission is void in that it prohibits reasonable allowance to appellants for services performed in transporting cotton from warehouses to shipside, which services are shown by the undisputed evidence to be a substitute for transportation which the carriers hold themselves out to perform.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 22 and 32 filed in the record herein.)

8. The order of the Commission is void in that it requires the establishment of rates and practices which result in unjust discrimination and undue prejudice to appellants and undue preference to uptown and interior warehouses and shippers using the same.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 23, 24, 25, 29, 30, 39, and also No. 4 filed in the record herein.)

[fol. 957] 9. The Court erred in holding that the only question for consideration was the rate established without

regard to the transit privileges or allowances embraced in the findings and order of the Commission fixing the rates.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 6, 26, 27, 28, 45 and 53 filed in the record herein.)

10. The Court erred in failing to find that the commission erred in holding that the transportation of cotton from warehouses used by appellants to ships berth upon adjacent or nearby wharves constituted intra-plant service and that no allowance could lawfully be made by carriers for any part of such transportation service.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 4 and 33 filed in the record herein.)

11. The Court erred in holding the order of the Commission prohibiting allowances to appellants in lieu of transportation to and upon near and adjacent wharves was merely a negative order and furnished no ground for injunctive relief.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 5 and 20 filed in the record herein.)

12. The order of the Commission is void because the Commission had no lawful power to compel the carriers to render without extra charge the additional services involved in transporting export shipments of cotton under export bills of lading as contrasted with local shipments for local delivery at the ports.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 48, 49 and 50 filed in the record herein.)

[fol. 958] 13. The Court erred in holding that the term "just and reasonable," when applied to action under Section 3 of the Interstate Commerce Act, was different in meaning from the same expression when used in connection with action under Section 1, and that is was only necessary to find that a rate would be just and reasonable to remove discrimination under Section 3 without reference to Section 1 or other sections of the Act.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 7 and 8 filed in the record herein.)

14. The order of the Commission is void in that it is based upon the finding, contrary to and unsupported by the evidence, that the warehouses used by appellants are on the waterfront and that delivery to such warehouses was substantially equivalent to making delivery of the same at shipside.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 31, 34, 36 and 37 filed in the record herein.)

15. The Court erred in holding that because appellants participated in a proceeding before the Commission where it was stated that one of its purposes was to arrive at a rate which would remove the discrimination, they were therefore limited to remedies which might be available under later proceedings which they might see fit to institute before the Commission.

(Under the foregoing proposition reference is made to Assignment of Error No. 18 filed in the record herein.)

16. The Court erred in holding that all appellants were bound by the findings and order of the Commission for the reason that they have had a hearing upon the question of [fols. 959 & 960] arriving at a rate to remove the discrimination, whereas, the undisputed evidence shows that appellant Manchester Terminal Corporation did not participate in the hearings and was denied a hearing by the Commission.

(Under the foregoing proposition reference is made to Assignment of Error No. 19 filed in the record herein.)

17. The decree should be reversed and the cause remanded to the District Court with directions to enjoin the order of the Commission.

(Under the foregoing proposition reference is made to Assignments of Error Nos. 54, 56 and 57 filed in the record herein.)

R. C. Fulbright, for Appellants.

Service of a copy of the foregoing statement of points is hereby acknowledged this 15th day of January, A. D. 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the United States. J. Stanley Payne, Assistant Chief Counsel, for Interstate Commerce Commission.

[fol. 961] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING RECORD AND EXHIBITS—Filed Jan. 15, 1929

It is hereby stipulated and agreed by and between the parties hereto that the entire record now on file (subject to such omissions as the Clerk shall make pursuant to paragraph 9 of Rule 13) shall be printed for the hearing of the foregoing appeal and the consideration of the points filed except that such parts as are designated below shall not be printed or otherwise reproduced by the Clerk, that is to say:

Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 16 before the District Court, which were transmitted as original exhibits pursuant to the stipulation of the parties and the order of the District Court;

The following exhibits, which were attached to and made a part of the certified copy of the transcript of testimony introduced at hearings before the Interstate Commerce Commission in the proceedings styled Weatherford Crump & Company, Complainants, versus Abilene & Southern Railway Company et al., Defendants, Docket No. 13991, and Application of Rates on Cotton to Gulf Ports, Docket No. 14940, and transmitted on appeal by the Clerk of the District Court of the United States for the Southern District of Texas, Houston Division, as original exhibits pursuant to the stipulation of the parties and the order of said District Court:

Docket 13991	Docket 14940
1	A-6
2	A-7
3	A-19
4	A-11
5	A-12
6	
8	
9	

[fol. 962]

Docket No. 14940 Continued

A 14	A 82	A 155
15	83	157
16	84	158
17	89	159
18	90	160
19	91	161
20	92	162
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48	121	185

49	123		188	
50	125		195	
51	126		197	
52	127		199	
53	128		203	
54	129		205	
55	131		206	excepting first
56	132			page.
57	137		207	
58	139	excepting first page.	208	
59	140	excepting first page.	209	
60	141		210	
61	142		211	
62	143		212	
63	144		213	
64	145		214	
65	146		215	
66	147		216	
67	148	excepting note	217	
68		at top of sec-	218	
69	149	ond page.		
70	150			
71	151			
76	152	e x c e p t i n g		
77		pages 3, 4, 6, 7,		
		8, 9, 10, 11, 13,		
79				
80	153	15, 16, 19, 20,		
81	154	21, 23, 24.		

[fol. 963] Of the exhibits so omitted from printing Counsel for the Appellants shall before the cause comes up for argument in the Supreme Court furnish to the Clerk ten (10) copies of the following exhibits which shall be bound in ten (10) binders, one of each of said exhibits for submission to the Judges, to wit:

Docket 13991

1
2
3
4
5
6

Docket 14940

A 6	A 47	A 81	A 149	A 176
7	58	82	150	177
9	59	83	151	178
11	60	84	153	179
12	62	97	154	180
14	63	98	155	181
18	64	113	157	182
19	65	114	158	183
20	66	115		184
30	67	117	159	185
33	68	121	160	
34	69	123	168	197
39	70	125	169	199
41	71	126	170	203
43	76	128	171	212
44	77	129	172	213
45	79	131	173	214
46	80	137	175	215
				218

It is further stipulated and agreed that counsel for any of the parties may in his brief or argument refer to any exhibit or portion thereof before the Commission or before the District Court that is not printed or not included in the list of those of which ten (10) copies shall be provided for the use of the Judges, by copying in his brief the part thereof which he considers pertinent.

[fols. 964 & 965] It is further agreed that this stipulation be printed by the Clerk as part of the record of appeal.

R. C. Fulbright, Counsel for Appellants. Elmer B. Collins, Special Assistant to the Attorney General of the United States of America; J. Stanley Payne, Solicitor for Interstate Commerce Commission; A. L. Reed, C. B. Cochran, Counsel for Intervenors, Appellees.

[fol. 966] DISTRICT OF COLUMBIA:

Before me, the undersigned authority, on this day personally appeared R. C. Fulbright, who having been duly sworn says that he is counsel for the appellants in the case of Alexander Sprunt & Son, Inc., et al., appellants, v. United States of America, et al., appellees, No. 612 on the Docket of the Supreme Court; that he has served upon counsel for all parties to the cause copies of the statement of points upon which appellants rely, either by delivery of copies to them or by mailing copies thereof to each of them on January 12, A. D. 1929; and that he has served upon counsel for all parties to the cause copies of the stipulation designating the parts of the record necessary for the consideration of the points relied upon, either by delivery or copies to them personally or by mailing copies thereof to them on January 9, A. D. 1929, in time to reach them on this 15th day of January, A. D. 1929.

R. C. Fulbright.

Subscribed and sworn to before me this 15th day of January, A. D. 1929. Beatrice E. Whitelaw, Notary Public, D. C. (Seal Beatrice E. Whitelaw, Notary Public, District of Columbia.)

[fol. 967] [File endorsement omitted.]

Endorsed on cover: File No. 33,921. S. Texas D. C. U. S. Term No. 612. Alexander Sprunt & Son, Inc.; Anderson, Clayton & Co.; Houston Compress Company, et al., appellants, vs. The United States of America, Interstate Commerce Commission, Arkansas Cotton Trade Association, et al. Filed December 31st, 1928. File No. 33,921.

CLERK'S COPY.

ORIGINAL EXHIBITS

Supreme Court of the United States

OCTOBER TERM, 1928

No. 612

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

FILED DECEMBER 31, 1928

(33,921)

(33,921)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 612

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

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[fol. 1] **Exhibit No. 7, Hershey**

(Copy)

Office of Railroad Commission of Texas

Circular No. 401

GENERAL ORDER

Austin, Texas, March 16, 1897.

Whereas this Commission has decided that the track of the Galveston Wharf Company's railroad is a "railroad" under the jurisdiction of the Railroad Commission of Texas;

And whereas this Commission has given the ten days' notice required by law of its intention to fix the rates for freight and passengers on said Wharf Company's railroad and all connecting railroads; and this question having been duly considered by the Commission;

It is hereby ordered by this Commission that all classifications, rulings and rates heretofore by it adopted or approved, and all classifications, rulings and rates which it shall hereafter adopt or approve for the transportation of general merchandise and commodities of all kinds and classes between the City of Galveston and other points in the State of Texas, shall, on and after the 8th day of April, 1897, apply and be in force from and to all points of shipment and delivery of such merchandise and commodities in the City of Galveston reached by the line of each railroad company entering the City of Galveston, either with its own tracks or in connection with the tracks of the Galveston Wharf Company.

It is further ordered that each railroad company, having and operating a line of railroad in the transportation of freight from and to and within the City of Galveston, shall furnish to shippers at points upon their tracks in said city at which it is customary or practicable to load freights, the cars required to receive shipments which are intended to be forwarded from Galveston to points in Texas, and

the railroad companies accepting such shipments shall assess charges for their transportation from the points at which they are loaded to final destination at and under the classifications, rulings and rates prescribed or approved by this Commission for application from Galveston to such final destination;

And it is further ordered that each railroad company having and operating a line of railroad in the transportation of freight from and to and within the City of Galveston, shall deliver at such points reached by its own tracks or in connection with the tracks of the Galveston Wharf Company in that city, at which it is customary or practicable to deliver freights, as may be designated by shippers or consignees for such delivery, the freights by them transported from points in Texas and destined and consigned to Galveston, and the charges for such transportation from original shipping points to points of final delivery shall be made at and under the classifications, rulings and rates prescribed or approved by this Commission for the transportation of such freights from their point of origin to Galveston; and delivery of freight at a point of delivery in the City of Galveston having been effected in accordance with the provisions hereof, the obligations of railroad companies in such respect shall cease, and further service required of railroad companies in the removal of shipments from their point of delivery, as herein provided, to a point in the City of Galveston thereafter selected by the shippers of consignees, shall be subject to the customary charge for switching.

John H. Reagan, Chairman; L. J. Storey, Allison Mayfield, Commissioners.

I hereby certify that the above is a true and correct copy of Circular No. 401, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 16th. day of March, 1897.

J. J. Arthur, Secretary. (Seal.)

[fol. 2] **Exhibit A-1**

Copy

File No. A-25

Houston Belt & Terminal Railway Company

Houston, Texas, Sept. 10, 1923.

Mr. Lawrence B. McCord, Cotton Hotel, Houston, Texas.

DEAR SIR: Referring to our conversation in Mr. Levy's office and in compliance with request made at that time, I am attaching a list of cotton factors at Houston, also, compress at which delivery of their cotton is made.

As to the method of handling cotton at this station under Domestic and Export rate, wish to advise that all cotton delivered to compresses billed destination Houston, charges are assessed on domestic rate.

Cotton received on through or export bills of lading, the export rate is used.

If cotton is received consigned to Houston and is, within proper time, declared for export, the export rate is applied.

Wish to further advise that we have not received instructions from General Freight Agents from any of the lines of which I am Agent, T&BV, GC&SF, and GCL, regarding policying of export and domestic cotton, i. e., cotton that is consigned locally to Houston concerns placed to compress and later delivered or switched to shipside.

Yours truly, (Signed) W. S. Clark.

WSC:P.

[fol. 3]

Exhibit A-2

Shipments of cotton moving from Texas points, consigned to various parties at Houston, on which the intrastate rates were applied and for which vessel space had been reserved before the cotton left the point of origin

Bales	From	W:B date	Space reserved	Car number	Delivering carrier	Vessel	For'gn dest.
25	Taylor	10: 2:23	8:14:23	Penn 75465	MK&T	Werra	Bremen
75	"	10: 2:23	8:14:23	" 81944	"	"	"
50	"	10: 2:23	8:14:23	" 75465	"	"	"
50	"	10: 2:23	8:14:23	MKT 55534	"	"	"
100	Giddings	10:11:23	6:23:23	NYC 222857	SA&AP	"	"
100	"	10:11:23	6:23:23	SAAP 8463	"	"	"
66	Sulphur Spgs.	.....	9: 6:23	DRT 62963	MK&T	Brush	Havre
42	" "	9: 8:23	9: 6:23	MP 6172	"	"	"
50	" "	9: 8:23	9: 6:23	SLSF 44681	"	"	"
38	" "	8:30:23	8:23:23	MP 20616	"	Connes Peak	"
62	Greenville	8:31:23	8:23:23	MKT 74757	"	"	"
75	Taylor	10: 2:23	7:26:23	So 160242	"	City of Fairbury	"
25	"	10: 2:23	7:26:23	MKT 55534	"	"	"
25	Greenville	9: 4:23	8:23:23	Penn 559802	"	Connes Peak	"
50	"	9: 3:23	8:23:23	SLBM 1251	"	"	"
62	"	8:31:23	8:23:23	MKT 74757	"	"	"

[fol. 4] **Exhibit A-3**

Copy

File 113-B

Galveston, Houston and Henderson Railroad Company, Galveston, Texas

James Witherow, Joint Agent

G. H. & H. R. R., I. & G. N. Ry., M. K. & T. Ry. of Texas

Sept. 21, 1923.

Mr. Lawrence B. McCord, Special Agent, Interstate Commerce Commission, Galvez Hotel, Galveston, Texas.

DEAR SIR: Our conversation date.

In the assessment on local and export cotton reaching Galveston the following rules govern our handling and as I understand it are uniform with all the Galveston Bay Lines.

Through Bills of Lading:

I mean those into which a European or Asiatic destination has been written and on which a through rate to such destination has been quoted, the steamer rate having been confirmed by contract on file. The Export rail rate is always assessed, no matter where the Steamship Agent will elect it delivered and his signature as receipt for the cotton is always required. Occasionally such cotton will be ordered by the Steamship Agent to a Shipside Density Press and the export rate in such cases will be assessed and receipt from the Steamship Agent demanded.

Domestic or Local Bs:L:

Cotton covered by these may be distributed in three classes namely:

First. Those covering cotton arriving for, and delivered to consignees at Presses or Yards away from the Bay Front, and on which the local rate is always assessed.

Second. Those covering cotton ordered by Brokers or Consignees direct to shipside and for which we are securing Steamship Agent's receipts. On these the export rate is always assessed.

Third. Those covering cotton ordered by Brokers or Consignees to any one of the Shipside Density Presses for high densitying. When the wording or clause 'For Export,' is written within these domestic Bs:L or waybills, the export rate is assessed. When the wording or clause 'For Export' does not appear on such domestic Bs:L, the local rate is assessed. Cotton handled under this heading is covered by receipts from the Shipside Density people, whom we consider as Agents for the Broker or consignee, who order the cotton to these plants.

Yours truly (Signed) Jas. Withrow, Agent.

CA.

[fol. 5] **Exhibit A-4**

Copy

Gulf, Colorado and Santa Fe Railway Company

A. W. Dunham, Agent

Galveston, Texas, Sept. 18, 1923.

A-84.

Mr. Lawrence B. McCord, Special Agent, Interstate Commerce Commission, c-o Hotel Galvez, Galveston, Texas.

DEAR SIR: With reference to conversation had with you yesterday, beg to advise that on cotton received at Galveston and delivered to Shipside Density compresses, we handle it in a like manner as that delivered to other compresses in Galveston not located on the Wharf front.

When cotton is covered by local bills of lading not carrying notation "For Export" local rates are assessed and collected. When cotton is billed on thru export bills of lading or on local export bills of lading showing "For Export", the export rates are assessed and collected. On all cotton delivered at the shipside compresses where local rates are collected, we take delivery receipts from the compress company in accordance with the orders furnished the carriers by the consignees or their agents.

Yours truly, (Signed) A. W. Dunham.

AWD:ES.

[fol. 6]

Exhibit A-5

Shipments of Cotton Moving from Texas Points Consigned to Various Parties at Galveston, on Which the Intra-state Rates Were Applied and for Which Vessel Space Had Been Reserved Before the Cotton Left the Point of Origin

Bales	From	W. B. date	Space reserved	Car number	Delivering carrier	Vessel	Forgn. dest.
40	Mart	8:29:23	8:20:23	CNW 47408	I. & G. N.	.....	Bremen
62	Clarksville	9: 7:23	6: 8:23	TP 15422	"	Hegira	Liverpool
71	Paris	9: 7:23	6: 8:23	TP 40395	"	"	"
75	Cuero	8:22:22	7:22:22	L & N 5020	Sa. Fe	Federal	Havre
50	Corpus Chr.	8:15:23	6:27:23	B:4 43128	" "	.....	"
75	Lockhart	8:10:23	7:28:23	RI 44691	M. K. & T.	Lowther Castle	Ghent
75	"	8:11:23	7:28:23	MKT 82189	"	"	"

[fol. 7] **Exhibit A-8**

TEXAS LINES' CIRCULAR NO. 1-C, ITEM NO. 285-A

NOTE B.—On shipments from a team track or industry track on one line to an industry track on another line the through charge shall be determined by adding together the following factors:

For originating line	$7.50
For delivering line	Charge as shown in Note C for service performed.
For intermediate line, if any	Charge as shown in Note C for service performed.

NOTE C.—For switching service of delivering line from transfer track to an industry track on its line, also for switching service of each intermediate line on cars moved from transfer track of one line to transfer track of another line the following charges shall apply:

For distances 1 mile and less	$2.25
For distances 2 miles and over 1 mile	3.00
For distances over 2 miles	3.75

(Here follows Exhibit No. A-10, marked side folio pages 8 and 9)

[fol. 10] **Exhibit A-13, I. C. C. 14940**

This exhibit shows the extent to which indirect, out of line, or back haul service is being performed by the railroads in the concentrating of cotton at interior concentrating points.

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	Page
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Gulf Coast Lines	20
International-Great Northern	1
K. C. M. & O.*	24
Missouri-Kansas-Texas	10
Panhandle & Santa Fe	28
San Antonio & Aransas Pass	3
S. A. U. & G.*	23

*In pencil in copy.

	Value	Capacity (bales)
Exporters Comp. & Whse. Co	$500,000	80,000
Wolfe Warehouse	$120,000	10,000
Houston Compress Co. (Old)	$750,000	100,000
Houston Compress Co. (New)	$1,600,000	75,000
International Warehouse	$35,000	10,000
Magnolia Warehouse & Storage Co	$1,000,000	75,000
Menkwa Comp. Co	$350,000	30,000
Merchants Comp. & Whse. Co	$500,000	50,000
Sanders Warehouse	$50,000	5,000
Southern Comp. & Whse. Co	$250,000	15,000
Ship Channel Comp. Co	$550,000	60,000
[fol. 9]		
Shippers Compress Co. (Clinton)	$250,000	30,000
Shippers Compress Co	$750,000	50,000
Turning Basin Comp. Co	$475,000	45,000
Union Comp. & Whse Co. (Bayou City)	$250,000	20,000
	$7,230,000	655,000

There is also some cotton handled by drays from certain
made by the drays vary with conditions but in no case is it l

In addition to the charges shown above for transportati
following additional expenses which the shipper must pay:

For loading into cars 10 cents per bale.

For unloading from cars 4 cents per bale.

	Value	Capacity (bales)	Served by	Charges for switching or barge service: Wharves 1-2-3-4, served by I-GN and HB&T	Wharves 7-8, served by Sou. Pac.	Manchester, served by I-GN, HB&T	Long Beach, served by I-GN	Ship channel comp. dock, served by I-GN
...p. & Whse. Co.....	$500,000	80,000	Sou. Pac.	$14.40 car	$8.10 car	$14.40 car	$16.20 car	$16.20 car
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...use	$120,000	10,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...ress Co. (Old).....	$750,000	100,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Sou. Pac.	14.40 "	8.10 "	14.40 "	16.20 "	16.20 "
			HB&T	6.30 "	14.40 "	6.30 "	14.40 "	14.40 "
...ress Co. (New).....	$1,600,000	75,000	I-GN	$8.10 car	$16.20 car	$8.10 car	No switching	$8.10 car
			Barge	14¢ bale	14¢ bale	14¢ bale	or barge service involved	14¢ bale
...Warehouse	$35,000	10,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			HB&T	6.30 "	14.40 "	6.30 "	14.49 "	14.40 "
...rehouse & Storage Co...	$1,000,000	75,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Sou. Pac.	14.40 "	8.10 "	14.40 "	16.20 "	16.20 "
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...Co.....	$350,000	30,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Sou. Pac.	14.40 "	8.10 "	14.40 "	16.20 "	16.20 "
			HB&T	6.30 "	14.40 "	6.30 "	14.40 "	14.40 "
...p. & Whse. Co.....	$500,000	50,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			SA&AP	14.40 "	16.20 "	14.40 "	16.20 "	16.20 "
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...house	$50,000	5,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
...p. & Whse. Co.....	$250,000	15,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
...Comp. Co.....	$550,000	60,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	No switching
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	or barge service involved
...ress Co. (Clinton).....	$250,000	30,000	Sou. Pac	$14.40 car	$8.10 car	$14.40 car	$16.20 car	$16.20 car
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...press Co.....	$750,000	50,000	I-GK	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Sou. Pac.	14.40 "	8.10 "	14.40 "	16.20 "	16.20 "
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
...Comp. Co.....	$475,000	45,000	Sou. Pac.	$14.40 car	No switching	$14.40 car	$16.20 car	$16.20 car
			Barge	14¢ bale	or barge service involved	14¢ bale	14¢ bale	14¢ bale
...Whse Co. (Bayou City)	$250,000	20,000	I-GN	$8.10 car	$16.20 car	$8.10 car	$8.10 car	$8.10 car
			Sou. Pac.	14.40 "	8.10 "	14.40 "	16.20 "	16.20 "
			Barge	14¢ bale	14¢ bale	14¢ bale	14¢ bale	14¢ bale
	$7,230,000	655,000						

...lso some cotton handled by drays from certain presses where the distance and the condition of the roads will permit. The charges ...ays vary with conditions but in no case is it less than 18 cents per bale.

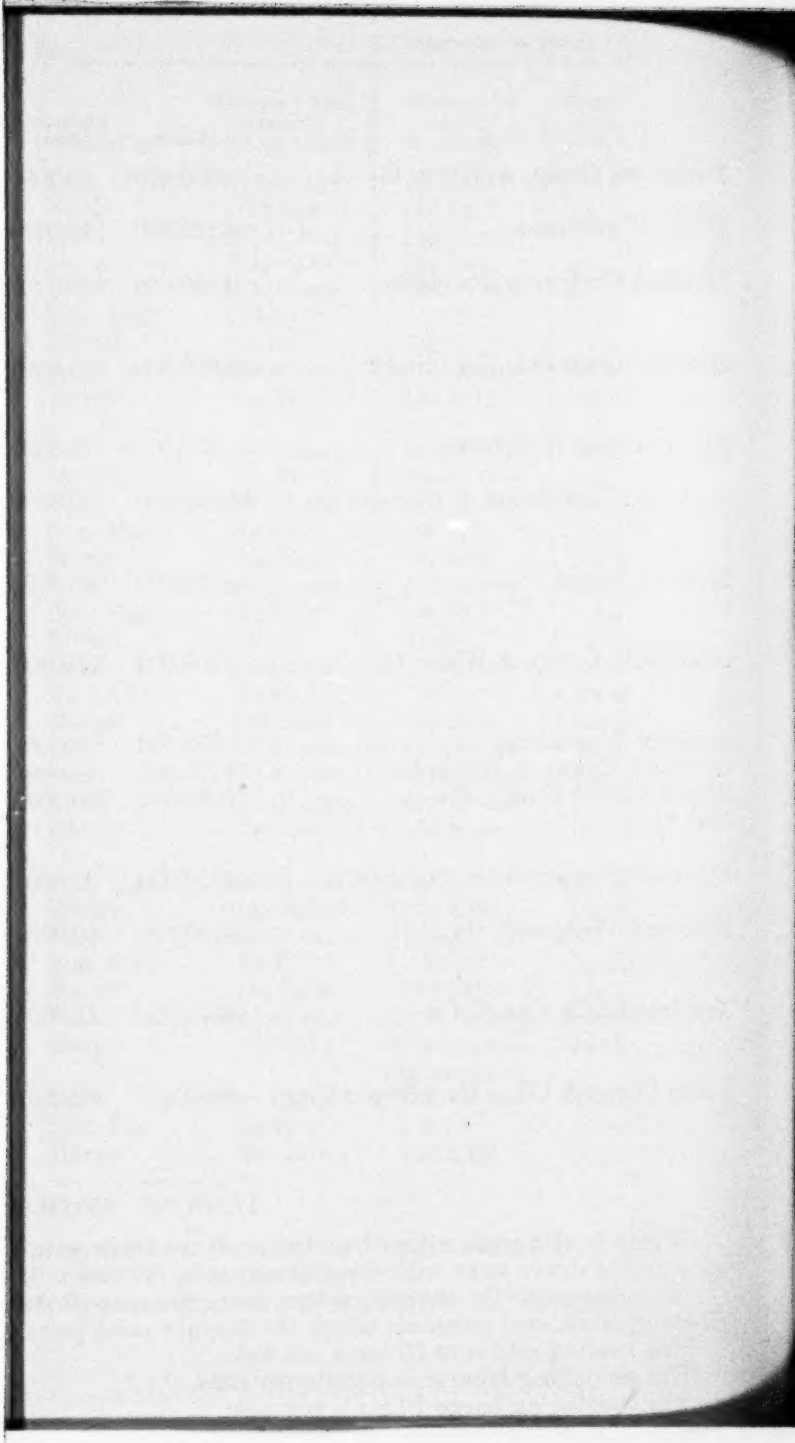
...n to the charges shown above for transportation from compresses and warehouses to the different wharves in Houston there are the ...tional expenses which the shipper must pay:

...g into cars 10 cents per bale.

...ding from cars 4 cents per bale.

...g on barge 10 cents per bale.

...on dray 10 cents per bale.



	Page
St. Louis-Southwestern	18
Southern Pacific	15
Trinity & Brazos Valley	27
Texas & Pacific	10
Dallas Cotton Exchange	29

[fol. 11] This statement shows the extent to which indirect and out of line service is performed by the International-Great Northern Railroad without any charge being assessed against the interest for whose account this extra service is performed.

Item 5—Paragraph B, I-GN Tariff 2310-C, ICC 829:

Compression

The I-GN Railroad will permit Compression at the first compress in either direction from point or origin.

Item 30-C, Paragraph B, I-GN Tariff 2310-C, ICC 829:

Concentration

This company will permit first concentration privilege at first compress point in either direction from point of origin.

Below is shown points at which compresses on the I-GN railroad are located, also the distance from those compresses to Houston via the route of the I-GN:

	Distance to Houston
Longview	233
Mineola	241
Tyler	215
Jacksonville	178
Palestine	151
Hearne	128
Bryan	101
Navasota	72
Marlin	162
Waco	201
Italy	245
Fort Worth	296
Taylor	174
Austin	210
San Antonio	289

Exceptions

Item 100:

	May concentrate and compress at	District to Houston via I-GN RR. On direct shipment	Via concentrating point
McDaniel	Hillsboro	240	270
Mertens	"	236	266
Irene	"	232	271
Walling	"	228	274
Malone	"	226	276
Penelope	"	222	281
Birome	"	217	285
Hoen	"	215	287
Le Roy	"	207	295

Item 105:

Lampasas GC&SF	Austin	270 (Via GC&SF)	380 GC&SF, Milano, I. G. N. Austin, and I. G. N.

[fol. 12]

Item 110:

From Cotton Belt Stations south of Jacksonville to Alto, inclusive	Longview	178 from Jacksonville	286 from Jacksonville via Longview

Item 115:

From Cotton Belt Hillsboro branch	Italy via Mertens	Indirect service is: Mertens to Italy 8 Italy to Mertens 8 — 16

Item 120:

From Timpson & Henderson stations — May concentrate and compress at I-GN points not in line of transit but distant not more than 60 miles.

This will take cotton to Longview..... 38 miles
Round trip ..... 76 miles
This will take cotton to Tyler..... 48 miles
Round trip..... 96 miles

Item 125

T. & B. V. Stations	May concentrate and compress at	Distance to Houston: Via T&BV	Via Singleton, I-GN to Navasota, thence to Houston Via I-GN
Newby	(Navasota via)	132	149
Koch	(Singleton and)	131	148
Concord	(I-GN)	124	141
Cullinan	"	122	139
Flynn	"	116	133
Normangee	"	107	125
George	"	103	120
North Zulch	"	99	116
Zulch	"	97	114
Cross	"	92	109
Iola	"	89	106
Grimes	"	84	101
Polk	"	80	97
Singleton	"	78	..
Shiro	"	72	100
Keislers	"	69	104
Richards	"	67	106

[fol. 13] **Statement Showing the Amount of Unnecessary Service Performed by the San Antonio & Aransas Pass Railway Company**

Points at which compresses are located on the S. A. & A. P. Railway and the distance to Houston via S. A. & A. P., follow:

	Miles to Houston
Yoakum	118
Cuero	135
Kenedy	176
San Antonio	336
Shiner	128
Giddings	185
Cameron	235
Waco	288
Luling	167
Lockhart	183
Sinton	237
Taft	245
Corpus	264

The San Antonio & Aransas Pass Railway Company Local Freight Tariff makes the following provisions:

Item 3, Paragraph B, as to compression, and Item 4, Paragraph C, as to concentration, provide:

"Cotton or cotton linters may be hauled back to and compressed or concentrated at a compress located at a point on this railroad not in direction of final destination, but which is nearer to the point of origin than is the first compress in direct route to destination, provided no compress is passed."

Item 3, Paragraph D, as to compression, and Item 4, Paragraph E, as to concentration, provide:

"Where compresses are in operation at any two points on this railroad not over 16 miles apart, cotton and cotton linters originating at apoints beyond first compress point in transit or at points intermediate between two compress points, may be compressed at either of such compresses."

Item 3, Paragraph E, as to compression, and Item 4, Paragraph G, as to concentration, provide that:

"Cotton or cotton linters originating at Mathis or Ellis, or at any station on the Texas-Mexican Railway west of Robstown, when routed via Ellis may be compressed in transit or may be concentrated at San Antonio when routed to interstate or foreign destination via Houston."

[fol. 14] The effect of the above rule is illustrated below: The uncompressed haul to San Antonio is 119 miles from Mathis and 148 miles from Alice, and the compress at Kenedy is passed.

	Distance to Houston via S. A. & A. P.	
From	On direct shipment	Via San Antonio
Mathis	234	357
Alice	263	386

Item 4, Paragraph C:

Concentration

"Cotton or cotton linters from any station on this line or other stations on connecting lines from which thru rates apply may be concentrated at any station on this line. For extra back haul service no extra charge will be made if the concentrating point is nearer to origin than is the first compress point in direction of final destination."

Item 4:

Paragraph H, reads:

"Cotton originating at Mathis may be concentrated at Corpus Christi without charge for extra service when routed out of Corpus Christi via S. A. & A. P."

Mathis to Houston via SA&AP direct 234 miles
" " " " " " *323* "

[fol. 15] This exhibit deals with the back haul or indirect service performed by the Santa Fe Lines.

Points at which compresses are located on the Santa Fe Texas Lines and their distance (via Santa Fe Lines) to Houston are shown below:

Brenham	121	Miles
Cameron	183	"
Temple	213	"
Brownwood	343	"
Brady	352	"
Coleman	373	"
Ballinger	405	"
Sweetwater	457	"
Snyder	496	"
Lubbock	578	"
McGregor	238	"
Waco	257	"
Cleburne	312	"
Fort Worth	341	"
Gainesville	405	"
Dallas	365	"
Wolfe City	425	"
Paris	463	"
Honey Grove	445	"
Wxetherford	352	"
Navasota	164	"
San Augustine	250	"
Timpson	300	"
Longview	337	"

Paragraph (a), Item 40 C, Santa Fe Circular No. 2226-F, I. C. C. No. 9443, provides that:

"Cotton may be given the privilege of concentration at the nearest available compress in either direction, or at first compress in direction of destination."

Item 10, Santa Fe Circular 2226-F, I. C. C. No. 9443, provides that

"Cotton will be compressed in transit at the nearest compress in either direction, or at first compress in direction of destination."

Additional privileges all of which entail even greater amounts of back haul or indriect service without any charge therefor, are provided for in separate items, the scope and effect of which are shown below:

EXHIBIT A-13—Continued

From	May Concentrate at.	
Weatherford to Cleburne, inclusive	Dallas	This involved extra and unnecessary haul from Cleburne to Dallas 54 miles, and back from Dallas to Cleburne.
Stations in Texas and Oklahoma north of Cleburne	Dallas	Total 106 miles.

[fol. 16]
Item 110:

From	May Concentrate at.	
All points east of Ballinger via Coleman to Sweetwater	Ballinger	Means extra and unnecessary service Coleman to Ballinger 32 miles and Ballinger to Coleman, total 64 miles.

Item 120:

From	May Concentrate at.	Distance to Houston via Santa Fe	
		On direct Shipment	When concentrated at Brenham
Sealy	Brenham	89	153
Peters	"	95	147
Bellville	"	102	139
Kenney	"	111	131

Item 125:

From	May concentrate at	Distance to Houston via Santa Fe	
		On direct Shipment	When concentrated at Brownwood
Ogles	Brownwood	278	408
Lometa	"	287	400
Antelope Gap	"	295	391
Goldthwaite	"	306	375
Mullin	"	319	368
Zephyr	"	331	355
Ricker	"	337	349

Item 130:

From	May concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Cameron
Caldwell	Cameron	153	213
Chriesman	"	160	206
Milano	"	169	197
Hoyte	"	176	190

EXHIBIT A-13—Continued

Item 140:

From	May Concentrate at.	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Cleburne
Riovista	Cleburne	304	320
Blum	"	298	327
Kopperl	"	290	335
Morgan	"	283	342
Meridian	"	276	349
Clifton	"	265	359
Valley Mills	"	254	360
Crawford	"	245	379
McGregor	"	235	385
Moody	"	228	396
Pendleton	"	220	404

Item 150:

From	May concentrate at	Distance to Houston via Santa Fe: On direct shipment	Distance to Houston via Santa Fe: When concentrated at Dallas
Meredith	Dallas	318	412
Alvarado	"	325	406
Trueloves	"	328	402
Venus	"	332	399
Wyatt	"	335	396
Midlothian	"	339	391
Cedar Hill	"	346	384
Duncanville	"	362	378

[fol. 17] Item 155:

From	May Concentrate at.	Distance to Houston via Santa Fe: On direct shipment	Distance to Houston via Santa Fe: When concentrated at Fort Worth
Joshua	Fort Worth	320	369
Crowley	"	329	358
Venus	"	332	389
Alvarado	"	325	382
Cresson	"	332	387

EXHIBIT A-13—Continued

Item 160:

From	May Concentrate at.	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Gainesville
Saginaw	Gainesville	349	462
Blue Mound	"	355	456
Haslet	"	357	454
Justin	"	366	445
Fonder	"	372	438
Krum	"	379	432
Ranger	"	387	423
Valley View	"	395	415
Fair Plans	"	401	409

Item 175:

From	May Concentrate at.	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Honey Grove
Ladonia	Honey Grove	434	457
Pecan Gap	"	440	467

Item 180:

From	May concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Longview
Pickering	Longview	273	401
Flatfork	"	276	398
Tenaha	"	281	393
Cary	"	291	363
Murvane	"	293	381
Carthage	"	301	376
Haysland	"	306	368
Beckville	"	311	363
Tatum	"	317	317
Flanagan	"	321	353
Haston	"	325	342
Woodall	"	331	343
Trabue	"	294	386

Item 205:

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Paris
Ladonia	Paris	434	493
Ben Franklin	"	445	481
Roxton	"	450	476
Ambia	"	456	470

EXHIBIT A-13—Continued

Item 220:

From	May Concentrate at	Distance to Houston via Santa Fe: On direct shipment	Distance to Houston via Santa Fe: When concentrated at San Augustine
Venable	San Augustine	244	256
Steep Creek	"	243	257
Rebecca	"	239	261
Bronson	"	234	266
La Marle	"	231	268
Rush	"	228	272
Pineland	"	227	273
McElroy	"	223	277
Brockland	"	220	280
Browndell	"	217	283
Harton	"	214	286
			292
[fol. 18] Item 220 (cont.)			
Neirath	"	189	311
Bon Ami	"	186	314
Kirbyville	"	182	318
Bess May	"	168	332
Buna	"	165	333
Evadale	"	156	344
Lillard	"	153	347
Silsbee	"	181	350

Item 235:

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Sweetwater
Buffalo Gap	Sweetwater	415	499
Tuscola	"	410	504

Item 240: Para. B

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Temple
Rogers	Temple	200	227
Hardenheimer	"	207	219

Item 245:

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Timpson
Center	Timpson	269	331
Teneha	"	221	319

Item 250:

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Waco
Morgan	Waco	283	321

EXHIBIT A-13—Continued

Item 260:

From	May Concentrate at	Distance to Houston via Santa Fe	
		On direct shipment	When concentrated at Wolfe City
Garland	Wolfe City	378	472
Sachme	"	303	467
Wylie	"	369	463
Clear Lake	"	392	458
Copeville	"	396	454
Farmersville	"	403	447
Merit	"	409	441
Coleste	"	416	434

[fol. 19] This exhibit deals with the practice of the Texas and Pacific in the matter of free back haul or indirect service for cotton to be concentrated or compressed in transit. These rules are published in Freight Tariff 40-I, ICC 2835.

Item 10:

"Cotton to be compressed in transit will be stopped at the first compress in direction to destination except that this line may compress shipments of cotton at the first compress station in either direction from original shipping point and waive back haul charges therefor."

Item 55:

"Cotton may be concentrated at any compress in direction of final destination or at the first compress in the opposite direction, without any charge for back haul."

Below is list of points at which compresses on the Texas & Pacific are located, also the distance from each compress via Texas & Pacific to Marshall, which will serve to show what the distance is between each of the compresses:

	Distance to Marshall
Marshall	...
Texarkana	67
Shreveport, La.	43
Clarksville	128
Paris	158
Honey Grove	179
Bonham	195
Denison	225
Sherman	221
Fort Worth	182
Dallas	151
Terrell	116
Mineola	69
Longview	24
Weatherford	213
Abiline	243
Sweetwater	384
Colorado	412

EXHIBIT A-13—Continued

Item No. 75:

	May concentrate at	Distance to Houston via T&P: From Sweetwater via Santa Fe	Distance to Houston via T&P: From Sweetwater via T&P to Dallas thence via GC&SF
States of Arizona, California or New Mexico.....	Dallas	468	599

Item 85-A:

.....	May concentrate at Colorado	Indirect service is Roscoe to Colorado 20 miles, and return—Round trip 40 miles.

[fol. 20] This statement shows the extent to which indirect and out of line service is performed by the M. K. T. Railroad of Texas without any charge being assessed against the interest for whose account this extra service is performed.

These provisions are found in M. K. T. Freight Tariff 4374-N, I. C. C. No. B-1051.

Item 180:

	May concentrate and compress at	Distance to Houston via M-K-T	
		On direct shipment	Via concentrating point
Granger	Austin	176	245
Wier	"	185	236
Georgetown	"	190	230
Burkland	"	199	222
Pflugerville	"	205	216
Sprinkle	"	209	209
Kiser	"	200	200
Hoxie	"	168	263
Circleville	"	170	251

Item 185:

Granger	Bartlett	176	188
Weir	"	185	196
Georgetown	"	190	201
Burkland	"	199	208
Pflugerville	"	205	216
Sprinkle	"	209	223
Kiser	"	200	232
Hoxie	"	168	194
Circleville	"	170	192

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Item 190:			
Echo	Belton	201	215
Item 195:			
Alvarado	Cleburne	300	332
Conley	"	296	336
Grandview	"	291	342
Itaska	"	263	347
Schofield	"	278	352
Lovelace	"	277	354
Item 200:			
Honey Springs	Dallas	332	343
Lancaster	"	324	352
Red Oak	"	317	359
Sterrett	"	314	362
Ray	"	420	432
Preston	"	417	430
Pottsboro	"	414	427
Hagerman	"	409	422
Deaver	"	407	420

Sadler	"		402	415
Whitesboro	"		396	411
Collinsville	"		392	405
Tioga	"		385	398
Pilot Point	"		380	393
Aubrey	"		373	386
Mingo	"		367	380
Denton	"		362	376
[fol. 21] Roanoke	"		346	393
Keller	"		341	397
Watauga	"		336	402
Hodge	"		331	407

Item 210:

Gid	Denison		426	426
Bono	"		428	428
Terrane	"		430	438
Bells	"		431	436
Canaan	"		427	441
Whitewright	"		424	443
Trenton	"		417	450
Leonard	"		410	457
Goodrow	"		407	460
Celeste	"		404	463
Kingston	"		401	466
Kellogg	"		398	470

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T	
		On direct shipment	Via concentrating point
Peinel	Denison	394	473
May	"	420	426
Preston	"	417	429
Pottsboro	"	414	432
Hagerman	"	409	437
Deaver	"	407	439
Sadler	"	402	444
Whitesboro	"	398	448
Woodbine	"	397	455
Hope	"	393	459
Collinsville	"	392	454
Tioga	"	385	461
Pilot Point	"	380	466
Aubrey	"	373	473
Mingo	"	367	479
Denton	"	362	484
Argyle	"	356	491
Smoots	"	351	495
Roanoke	"	346	509
Keller	"	341	504
Watauga	"	336	510
Hodge	"	331	515

Corinth	"		368	490
Garza	"		366	493
McGee	"		362	497
Lewisville	"		360	499

Item 215:

Alexander	Dublin		336	354
Clairette	"		331	359
Hico	"		324	366
Iredell	"		312	378
Low	"		304	385
Walnut Springs	"		302	388
Morgan	"		293	397
Comanche	"		334	410
Creamer	"		327	403
Guatina	"		321	398
[fol. 22] Lamkin	Dublin		313	389
Shockley	"		308	385
Edson	"		302	379
Hamilton	"		298	384
Leon River	"		305	377
Spurlin	"		311	371
Carlton	"		316	365
Gilmore	"		319	362
Maloney	"		322	360

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Alexandra	Dublin	328	...
Alarm Creek	"	334	361
Stephenville	"	340	366

Distance from above Group on "Direct Shipment" is figured via Cotton Belt, McGregor, Santa Fe to Houston.

Item 220:

Cardiff	Elgin	144	154
Lasher	"	142	156
Sayers	"	140	158
Salvin	"	137	136
Phelan	"	135	163
Biglo	"	134	164
Miley	"	133	165
Bastrop	"	130	168
Hills Prairie	"	126	173
Upton	"	122	177
Fawcett	"	118	180
Smithville	"	115	184
Brim	"	110	188

West Point	"		106	193
Plum	"		102	197
Item 225:				
Lovelace	Fort Worth		278	375
Mutt	"		280	372
Itaska	"		283	369
Jeff	"		284	367
Grandview	"		291	361
Conley	"		296	386
Alvarado	"		300	352
Cleburne	"		316	355
Keene	"		311	350
Egan	"		306	365
Burleson	"		313	339
Bethel	"		319	332
Item 230:				
May	Gainesville		420	451
Preston	"		417	448
Pittsburg	"		414	445
Hagerman	"		409	440
Deaver	"		407	438
Sadler	"		402	433
Whitesboro	"		398	429
Woodbine	"		397	422

Exhibit A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Hope	Gainesville	393	417
Collinsville	"	392	436
Tioga	"	385	442
Pilot Point	"	380	448
Aubrey	"	373	495
Mingo	"	367	460
[fol. 23] Argyle	"	355	472
Smoots	"	351	476
Roanoke	"	346	482
Keller	"	341	489
Watauga	"	336	492
Hodge	"	331	497
Corinth	"	368	471
Garza	"	366	474
McGee	"	362	478
Lewisville	"	360	480
Item 235:			
Acheson	Greenville	389	395
Caddo Mills	"	384	401
Burrow	"	378	406

Boyse City	"		375	409
Fate	"		371	413
Rockwall	"		366	418
Hagen	"		363	422
Cheisa	"		361	423
Rowlett	"		359	425
Garland	"		354	430
Bethard	"		351	433
Fisher	"		345	437
White Rock Spur	"		344	440
Hiland	"		343	441
Armo	"		342	442

Item 240:

Stations on Wichita Valley west of Stamford	Hamlin	Indirect service is	
		Stamford to Hamlin	19.6
		Hamlin to Stamford	19.6
		Total	39.2

Item 250:

Chat	Hillsboro		267	277
Abbott	"		262	282
Bess	"		258	286

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point	
West	Hillsboro	257	287	
Drew	"	250	294	
Elm Mott	"	248	296	
Powers	"	244	300	
Item 260:				
Milford	Italy	287	297	
Hamel	"	283	301	
Lakenon	"	279	305	
All stations on Cotton Belt between Corsicana and Hillsboro	Italy	Indirect Service is		
		Hillsboro to Italy		20
		Italy to Hillsboro		20
				40.
Item 265:				
Milburn	La Grange	93	97	
Halsted	"	90	101	
Wessels	"	87	103	

Fayetteville	"	82	108
Hatter	"	80	110
Dolman	"	80	111
Pisek	"	79	114
New Ulm	"	76	120
[fol. 24] Sealy	La Grange	51	142
San Felipe	"	49	145
Nudavy	"	46	148
McDowell	"	43	149
Enos	"	42	150

Item 295:

Hunter	San Antonio	174	264
Gruene	"	181	258
New Braunfels	"	184	254
Solms	"	188	251
Dittlinger	"	189	250
Comal	"	192	247
Luxelo	"	198	240
Fratt	"	206	232
Remount	"	208	230
Salado	"	211	228

Item 300:

Whitesboro	Sherman	398	464
Collinsville	"	392	470

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Tiogo	Sherman	385	476
Pilot Point	"	380	482
Aubrey	"	373	489
Mingo	"	367	495
Denton	"	362	499
Argyle	"	355	507
Smoots	"	351	511
Roanoke	"	346	516
Keller	"	341	521
Watauga	"	336	526
Hodge	"	331	531
Item 305:			
Faker	Shreveport	469	654
Cason	"	474	648
Swinford	"	476	647
Bradfield	"	480	642
Daingerfield	"	981	642
Veals	"	484	638
Hughes Springs	"	486	636
Wilsons	"	488	634
Patman	"	491	631

Pattengill	"	492	630
Avinger	"	495	627
Pitch	"	497	625
Orrs	"	500	622
Lasater	"	502	621
Sarber	"	505	617
Hedges	"	507	616
Newline	"	507	615
Kelleyville	"	508	614
Jefferson	"	514	609
Schluter	"	516	607
Sherwin	"	517	605
Kundy's Mill	"	518	605
Baldwin	"	521	601
Wurtsbaugh	"	523	600
Karnack	"	526	596
Leigh	"	531	591
Lotta	"	533	589
Lemo	"	535	587
Waskem	"	541	581
[fol. 25] Nichols, La.	Shreveport, La.	553	569
Yendis, La.	"	555	567

Item 310:

Avoca	Stamford	458	473
Lueders	"	451	480

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Clear Fork	Stamford	450	481
Underwood	"	448	484
Budmathews	"	442	489
Acampo	"	437	494
Central Quarry	"	434	497
Coghill	"	432	500
Albany	"	427	505
Item 316:			
Shreveport Jct.	Sulphur Springs	392	453
Fox	"	394	450
Husbands	"	397	447
Campbell	"	402	443
Cumby	"	408	436
Marie	"	411	433
Brashear	"	414	430
Item 325:			
Holland	Temple	187	221
Sparks	"	192	216
Grace	"	195	212

Little Rock	"		196	211
Echo	"		201	207
Item 340:				
Mt. Lynn	Waco		234	242
Hewitt	"		230	246
Lorena	"		226	251
Bruceville	"		221	256
Eddy	"		219	258
Troy	"		212	265
Sampson	"		209	268
Shaw	"		206	271
Item 345:				
Kipling	Waxahachie		302	312
Forreston	"		298	316
Midlothian	"	(via G. C. & S. F.)	339	365
Item 350:				
Lindsay	Wichita Falls		419	587
Myra	"		425	581
Muenster	"		429	577
Coppers	"		435	571
St. Jo	"		439	567
Bonita	"		446	559

EXHIBIT A-13—Continued

	May concentrate and compress at	Distance to Houston via M-K-T: On direct shipment	Distance to Houston via M-K-T: Via concentrating point
Nocona	Wichita Falls	455	551
Belcherville	"	462	544
Ringgold	"	469	537
Huggins	"	473	538
Rosson	"	475	531
Walton	"	478	528
Henrietta	"	484	521
Teco	"	486	520
Edwards	"	488	517
Jolly	"	494	512
Interpretation No. 2—Supplement 5—Items 10 and 40:			
Whitesboro and all points west thereof	Dallas	398	412

[fol. 26] This exhibit shows the extent to which indirect and out of line service is performed by the Southern Pacific Lines without any charge being assessed against the interest for whose account this extra service is performed.

List of points at which compresses are located on the Southern Pacific Lines, and the distance from those compresses to Houston via Southern Pacific is shown below:

	Distance to Houston
Athens	230
Austin	165
Brenham	71
Bryan	99
Cuero	158
Corsicana	200
Dallas	255
Denison	328
Elgin	138
Ennis	221
Fort Worth	277
Giddings	106
Gonzales	158
Hearne	120
Jacksonville	165
Kaufman	270
La Grange	114
Lufkin	118
Luling	155
McKinney	286
Mexia	171
Nacogdoches	36
Navasota	71
Palestine	220
San Antonio	212
Schulenberg	109
Seguin	176
Sherman	318
Timpson	167
Victoria	130
Waco	186
Waxahachie	235
Shreveport, La.	231

Item 7-C, Supplement 22, Southern Pacific Circular No. 9-T, I. C. C. 1259:

"Unless the bill of lading is endorsed 'Through Uncompressed,' these lines will have the shipment compressed at their own convenience."

Item 15, Southern Pacific Circular No. 9-T, I. C. C. 1259:

"Shipments originating on these lines or received from connections shall be entitled to concentration privilege at any concentration point in direct line of transit between origin and destination or at the first concentration point in the opposite direction, also when not in direct line of transit as provided in Items 55 to 65 inclusive."

[fol. 27] Item 63-A, Supplement 22, Southern Pacific Circular 9-T, I. C. C. 1259:

Stations on the Texas Midland Ry.	May concentrate at	Indirect service is	
	Dallas	Ennis to Dallas	35 Mi.
		Dallas to Ennis	35 "
			70

Item 65—Southern Pacific Circular 9-T, I. C. C. 1259:

	May concentrate at	Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Fort Worth
Brambleton	Fort Worth	269	282
Kennedale	"	266	276
Bisbee	"	262	290
Hansfield	"	258	294
Britton	"	253	299
Midlothian	"	247	305
Sardis	"	239	312
Waxahachie	"	235	317

		Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Waxahachie
Boyce	Waxahachie	229	241
Ennis	"	221	250
Garrett	"	223	246
Palmer	"	229	251
Trumbull	"	233	255
Ferris	"	236	259
Wilmer	"	240	263
Hutchins	"	244	267
Lancaster	"	249	272
Trinity	"	246	270
Lakewood	"	248	271
Miller	"	250	273

		Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Austin
Daffan	Austin	150	174
Manor	"	150	179

		Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Elgin
Paige	Elgin	118	158
McDade	"	128	148

		Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Giddings
Carmine	Giddings	90	131
Ledbetter	"	97	115

		Distance to Houston via So. Pac.	
		On direct shipment	When concentrated at Brenham
Caldwell	Brenham	134	134
Chapel Hill	"	61	81
Lusk	"	69	74

[fol. 28]

	May concentrate at	Distance to Houston via So. Pac. On direct shipment	When concentrated at Waco
Groesbeck	Waco	169	256
Thornton	"	161	248
Kosse	"	153	240
Bramond	"	142	230
Reagan	"	150	221
Marlin	"	160	212
Perry	"	168	204
Reisel	"	172	200
Harrisons	"	178	194

		Distance to Houston via So. Pac. On direct shipment	When concentrated at Timpson
Appleby	Timpson	148	186
Mayotown	"	150	184
Fitze	"	155	179
Garrison	"	159	175
Henning	"	160	174
Gallagher	"	164	171
Houghton	"	166	168
Shelby Jct.	"	166	168

H. E. & W. T. Stations		Distance to Houston via So. Pac. On direct shipment	When concentrated at Nacogdoches
Davisville	Nacogdoches	123	154
Cochran	"	125	152
Kurth	"	127	150
Mallard Spur	"	128	148
Climax	"	130	146
Lola	"	131	145
Lonsdale	"	136	141
Dorr Jct.	"	138	139

T. & N. O. Stations		Distance to Houston via So. Pac. On direct shipment	When concentrated at Nacogdoches
Woodville	Nacogdoches	137	205
Doucette	"	140	202
Griffins	"	142	200
Wilsons	"	143	197
Colmesneil	"	146	196
Lima	"	149	193
Davis	"	153	188
Rockland	"	155	186
-nal	"	161	180
-avalla	"	167	176

		Distance to Houston via So. Pac. On direct shipment	When concentrated at Lufkin
Corrigan	Lufkin	93	143
-enford	"	96	141
-otomao	"	99	137
-oubling Spur	"	100	136
Hammock	"	102	134
-enova	"	105	131
-mporia	"	106	130
-iboll	"	107	129
-urk	"	110	126
-oshall	"	113	123
Fairchild	"	115	121

[fol. 29] This statement shows the extent to which indirect and out of line service is performed by the St. Louis-Southwestern Railway without any extra charge being assessed against the interest for whose account the extra service is performed.

The rules and regulations governing the compression and concentration of cotton on the St. Louis-Southwestern Railway are in Tariff 2500, I. C. C. 362, from which certain extracts follow:

Item 5, paragraph C, Compression:

"Where the shipper inserts in his bill of lading notation 'To Be Compressed' the cotton will be compressed at origin, in transit or at destination."

Item 20, paragraph B, Concentration:

"Cotton shall be concentrated in direction of final destination, but the railroad company will concentrate without extra charge at any compress point not in the direction of final destination if such station is nearer the original shipping point than is the first compress point in direction of final destination."

The following is a list of points on the Cotton Belt at which compresses are located, and the distance from those compresses to Texarkana via Cotton Belt, which will serve to show what the distance is between compresses:

	Distance to Texarkana
Athens	165
Corsicana	203
Dallas	194
Fort Worth	216
Gatesville	304
Gilmer	91
Greenville	133
Hillsboro	244
Hubbard	229
Jacksonville	159
McGregor	273
Mount Pleasant	61
Pittsburg	72
Sherman	170
Sulphur Springs	99
Texarkana	...
Tyler	128
Waco	258
Wolfe City	131

Exceptions

Item 115:

		Distance to Houston	
May concentrate at		Direct shipment thru Greenville to Dallas, thence G. C. & S. F.	Via Wolfe City G. C. & S. F. to Paris, thence C. C.
Commerce	Paris	440	514

[fol. 30] Item 120:

	May concentrate at	Distance to Houston: Direct shipment to Houston via G. C. & S. F.	Distance to Houston: Via G. C. & S. F. to Wylie, St. L. S. W. to Greenville back to Wylie, thence G. C. & S. F. to Houston
Celeste	Greenville	416	473
Farmersville	"	403	459
Garland	"	378	454

Item 125:

	May concentrate at	Amount of indirect service round trip
Eylau	Texarkana	10
Sledge	"	14
Hartman	"	16
Joyce	"	16
Trexler	"	20
Red Water	"	26
Maud	"	38
Corley	"	44
Carbondale	"	48
Stover	"	56
Simms	"	56
Bassetts	"	64
Stroud	"	68
Hoffman	"	68
Darden	"	72
Jennings	"	78
Naples	"	86
Omaha	"	94
Clay Ridge	"	98
Creel	"	100
Cookville	"	102
Barford	"	114
Nodena	"	114

[fol. 31] This exhibit deals with the back-haul and indirect service performed by the Texas Midland Railroad.

Compresses on the Texas Midland Railroad are located at the following points. The distance to Paris, Texas, is shown in each instance.

	Miles from Paris
Paris	..
Greenville	62
Terrell	84
Kaufman	95
Ennis	124

Item 2, Texas Midland Freight Tariff No. 227, I. C. C. 109, reads:

"Concentration Privileges: Cotton and Cotton Linters originating at non-compress points on this line or connecting lines under local bills of lading may be concentrated at the first accessible compress in either direction from original shipping point and reshipped to final destination under new bills of lading reading from compress point, without extra charge for back-haul, if any, therefor."

NOTE.—The maximum amount of indirect service under this rule would be, in the case of cotton originating just north of Greenville, concentrated at Paris, and then reshipped to Houston via Texas Midland, approximately 100 miles, which is particularly noteworthy in view of the fact that the entire Texas Midland Railroad is only 124 miles long.

[fol. 32] This statement shows the amount of extra service which is performed by the Gulf Coast Lines in hauling cotton from points on the Gulf Coast Lines for concentration at Corpus Christi, Robstown, Victoria, and at Sinton.

From	May concentrate without extra charge at	Distance to Houston on direct shipments	Distance to Houston via concentrating point
Clarkwood	Corpus Christi	238	254
Robstown	" "	230	261
Violet	" "	234	258

From	May concentrate without extra charge at	Distance to Houston on direct shipments	Distance to Houston via concentrating point
Calallen	Robstown	223	236
Angelita	"	220	240
Odem	"	217	243
Bullard	"	213	247
Sinton	"	209	250
Placedo	Victoria	147	184
Port O'Connor	"	191	218
Prague	"	182	209
Seadrift	"	172	199
Long Mott	"	166	193
Green Lake	"	162	189
Heyser	"	157	184
Tivoli	"	168	195
Jay	"	162	189
Maudlaw	"	170	197
Austwell	"	173	201
Madeline	"	154	182
Bloomington	"	152	179
Dernal	"	157	174
Hughes	"	161	170
Ewelder	"	202	230
Cranell	"	198	225
Woodsboro	"	191	218
La Rosa	"	189	216
Refugio	"	185	212
Greta	"	178	205
Vidaur	"	173	200
Inari	"	166	193
Marianna	"	162	189
La Rosa	Sinton	189	229
Refugio	"	185	232
Woodsboro	"	191	226
Cranell	"	198	220
Ewelder	"	202	275

Gulf Coast Lines Tariff 73 F. Item 70:

[fol. 33] This exhibit deals with the back-haul or indirect service which is performed in connection with concentra-

tion of cotton by the San Antonio, Uvalde & Gulf Railroad.

Compresses on the San Antonio, Uvalde & Gulf Railroad are located at San Antonio and at Corpus Christi, the distance between the two being 149 miles.

Paragraph (b), Item 3-A, Supplement 2 to S. A. U. & G. Railroad Tariff 154-C, I. C. C. 77, reads:

"Cotton or cotton linters may be hauled back to and compressed at a compress located at a point on this railroad, not in the direction of final destination but which is nearer to point of origin than is the first compress in direct route to destination; the through rate from origin or from compress point, whichever is higher, to be applied."

Paragraph (c), Item 4-A, Supplement 2 to S. A. U. & G. Railroad Tariff 154-C, I. C. C. 77, reads:

"The railroad will, at the request of shipper, concentrate uncompressed cotton or cotton linters at any compress point on its line of railroad not in the direction of final destination, provided the extra service involved does not exceed 75 miles and no other compress point is passed. No extra charge will be made for this privilege if the concentrating point is nearer to the origin than is the first compress point in the direction of final destination, but otherwise extra service charges shall be assessed of 30½ cents per bale when the extra service is 50 miles or less, and 43 cents per bale when over 50 to 75 miles."

The distance between compresses at San Antonio and at Corpus Christi being 149 miles, the above quoted rules have the effect of permitting back haul or indirect service up to the maximum of 149 miles.

[fol. 34] Statement Showing Amount of Unnecessary Extra Service Performed by the K. C. M. & O. Railway Company of Texas

K. C. M. & O. Circular No. 25-O, I. C. C. 324, Item 210 reads as follows:

"(a) Out of line service not exceeding one hundred (100) miles will be subject to the following back haul charges in addition to the regular freight rates:

Distance	Charges in cents per bale
50 miles and under	38½
75 miles and over 50 miles	53½
100 miles and over 75 miles	??

"(b) Back haul in excess of 100 miles will not be permitted. In such cases the lowest combination of locals will apply."

Exceptions to the Above Rule

Paragraph D, Item 210:

(Matter illegible.)

Distance to Houston

From	Via Chillicothe	To Chillicothe thence via Altus, Oklahoma and short line	To Chillicothe thence via WF&NW Hamlin	To Chillicothe thence via Sweetwater	Via Sagert direct shipme-
Rochester, Tex	510	353	601	624	43
O'Brien, Tex	505	548	595	619	44
Knox City, Tex	502	545	593	616	44
Benjamin, Tex	490	533	531	604	41
Tuscott, Tex	478	521	569	592	47
Crowell, Tex	465	504	551	574	48
Margaret, Tex	454	497	545	568	49
Medicine Mound, Tex	444	427	536	658	50

[fol. 35] Paragraph E, Item 210, Joint Freight Circular 25-G, KCM&O:

"Cotton from Round Timbers, Texas, to Pastura, Texas, Inclusive, may concentrate at Hamlin, and be re-shipped via Altus, Oklahoma, or Chillicothe, Texas, without charge for additional service."

Distance to Houston

From	To Hamlin, thence via Chillicothe	Via Chillicothe direct shipment	Via Sagerton direct shipment	To Hamlin, thence via Altus, Okla., WF&NW, Vernon, Tex., and short line
Round Timbers	667	451	525	710
Odell	662	446	520	702
Chillicothe	653	437	511	696
Medicine Mound	646	444	504	689
Margaret	636	454	493	679
Crowell	629	465	487	672
Truscott	612	478	470	655
Benjamin	599	490	457	642
Knox City	587	502	445	630
O'Brien	585	505	443	628
Rochester	580	510	438	623
Rule	570	519	428	613
Sagerton	562	528	420	605
Pastura	553	537	429	596

"Cotton from Plasterce to Paret, inclusive, may concentrate at Hamlin and be re-shipped via Sweetwater without additional charge for additional service."

Distance to Houston

From	To Hamlin, thence via Sweetwater	Via Sweetwater direct shipment	Via Hamlin direct shipment
Plasterco	425	437	425
McCaulley	428	434	428
Sylvester	433	429	433
Longworth	440	422	440
Paret	454	410	454

[fol. 36] Paragraph F, Item 210, Joint Freight Tariff 25-G, KCM&O:

"Cotton from Chillicothe, to Hamlin, inclusive, may concentrate at Rule, Texas, and be re-shipped via Altus, Oklahoma, Chillicothe, Texas, Hamlin, Texas, or Sweetwater, without additional charge for additional service."

Distance to Houston

From	To Rule, thence via Altus, Okla., WF &NW, Vernon and short line	To Rule, thence via Chillicothe	Via Chillicothe direct	To Rule, thence via Hamlin	Via Hamlin direct	To Rule, thence via Sweetwater	Via Sweetwater direct
Chillicothe	480	602	437	528	528	551	550
Medicine Mound	487	595	444	521	521	544	544
Margaret	497	584	454	510	511	533	534
Crowell	508	578	465	504	504	527	527
Truscott	321	560	478	486	487	509	509
Benjamin	533	548	490	474	474	497	497
Knox City	545	536	502	462	462	485	485
O'Brien	548	533	505	459	460	482	482
Rochester	553	528	510	454	455	477	478
Rule	562	...	519	...	445	...	468
Sagerton	571	527	528	453	437	476	460
Pastura	580	536	537	462	428	485	451
Hamlin	588	544	545	470	420	493	442

Paragraph G, Item 210, Joint Freight Circular 25-G, KCM&O:

"Cotton from McCaulley, to Paret, inclusive, may concentrate at Sweetwater and be re-shipped via Altus, Okla., Chillicothe, Texas, or Hamlin, Texas, without additional charge for the additional service."

Distance to Houston

From	Via Sweetwater direct shipment	To Sweetwater, thence via Altus, Okla.	To Sweetwater, thence via Chillicothe	To Sweetwater, thence via Hamlin
McCaulley	434	649	606	480
Sylvester	429	644	601	475
Longworth	422	637	594	468
Paret	410	625	582	456

[fol. 37] This exhibit deals with the back-haul and indirect service performed by the Trinity and Brazos Valley Railway Company.

Compresses on the Trinity & Brazos Valley Railway are located at the following points. The distance from Houston is shown in each case:

	Miles north of Houston
Teague	108
Mexia	122
Hubbard	145
Hillsboro	170
Cleburne	200
Corsicana	187
Waxahachie	218

Paragraph B, Item 5 of T. & B. V. Railway Tariff 247-N, I. C. C. No. 204, reads:

"The Trinity and Brazos Valley Railway will permit the compression of cotton at first compress in either direction from point of origin."

Paragraph B of Item 85, Trinity and Brazos Valley Tariff 247-N, I. C. C. No. 204, reads:

"The compress station at which it is desired to concentrate cotton or cotton linters shall be in the direction of first destination as reached by the Trinity & Brazos Valley Railway Company, except the Trinity and Brazos Valley Railway may at its option when requested by shippers to do so, concentrate shipments of cotton or cotton linters at any compress station on its line in either direction from original shipping point, and waive back haul charges, if any, therefor."

[fol. 38] Copy of a letter issued by the General Freight Department of the Panhandle and Santa Fe Railway Company on September 6th, 1921, announcing that cotton from Panhandle & Santa Fe stations when destined to Houston, Galveston or Texas City, may be concentrated at Dallas without charge for indirect service

"To P&SF Cotton Shipping Agents:

"My round letters of August 30th and September 7th, dealing with the above subject, are hereby cancelled. The following will govern.

"Cotton from our stations, destined Fort Worth or Dallas, Texas, routed via Sweetwater, Texas, and GC&SF Ry., for concentration at and reshipment from Fort Worth and Dallas, when destinations upon reshipment from Fort Worth or Dallas are stations in Texas—say Houston, Galveston and Texas City—on domestic bills of lading, will be subject to through rates, without backhaul charges or other penalties, provided the cotton is compressed at the first available compress point on our line and moves into Fort Worth and Dallas in compressed form.

"When cotton from our stations moves into Fort Worth or Dallas in uncompressed form, via Sweetwater, Texas, and GC&SF Ry., is concentrated at and reshipped from Fort Worth or Dallas to Texas destinations under domestic bills of lading, the through rates will apply, origin to final destination, but the compression cost incurred at Fort Worth or Dallas will not be absorbed by the carriers, but will be collected in addition to such through rates."

The distance from Sweetwater, Texas, to Houston, Texas, via Sante Fe Lines is..... 457 miles
The distance via Santa Fe Lines thru Temple, thence to Dallas and back to Houston, is... 761 miles

EXHIBIT A-13—Continued

[fol. 39] Free indirect service being performed on cotton concentrated at Dallas and for which provision does not appear to be made in railroad tariffs which are in our possession

Abilene & Southern Ry.	May concentrate at	Distance to Houston	
		Via Ballinger and GC&SF	Via A&S to Abilene thence via GC&SF
Ballinger	Dallas	405	611
Hatchell	"	413	603
Winters	"	421	595
Chapman.	"	427	589
Bradshaw	"	431	584
Guion	"	434	582
Ovalo	"	439	577
Tuscola	"	442	574
York	"	446	570
Iberis	"	451	565
Hunch	"	453	563
Abilene	"	459	557
Anson	"	484	583
Padium	"	492	590
Hamlin	"	501	599

C. R. I. & G. Ry.	May concentrate at	Distance to Houston	
		Via Katy from Fort Worth	From Ft. Worth to Dallas via CRI&G. Dallas to Houston Katy
Stations Fort Worth and North	Dallas	326	373

Cisco & Northeastern	May concentrate at	Distance to Houston	
		From Cisco via Katy	T & P, Cisco to Dallas, Katy, Dallas to Houston
	Dallas	394	486

F. W. & D. C. Ry.	May concentrate at	Distance to Houston	
		Via Mangum and Katy	Via Eastland T&P to Dallas, Katy to Houston
Mangum	Dallas	383	483
Arnat	"	389	477
Eastland	"	390	476
Hydro	"	393	478
Gunsight	"	399	485
Wayland	"	406	492
Breckwalker	"	411	497

Exhibit A-13—Continued

H. & T. C. Ry.	May concentrate at	Distance to Houston: On direct shipment	Distance to Houston: To Dallas and back
Miller	Dallas	250	261
Lakewood	"	248	262
Trinity	"	247	264
Lancaster	"	249	271
Hutchins	"	244	266
Wilmer	"	240	271
Ferris	"	236	275
Trumbull	"	233	278
Palmer	"	229	282
Garrett	"	224	287
Boyce	"	229	292

[fol. 40]

I. & N. W. Ry	May conentrate at	Distance to Houston: From Jefferson via T&P Longview I-GN to Houston	Distance to Houston: From Jefferson to Dallas via Katy. Dallas to Houston Katy.
All Points	Dallas	271	515

	May concentrate at		Distance to Houston	
			Direct shipment via Chillicothe, San Angelo, or Sweetwater & GC-&SF, or Alpine and So. Pac.	Via Sweetwater and T&P to Dallas, T&P to Mineola. I-GN to Houston.
State Line	Dallas	(Via Chillicothe)	491	716
Chillicothe	Dallas	(Via FWDC, Fort Worth, I GN)	472	699
Crowell	"	Via Chillicothe	498	675
Benjamin	"	Via Chillicothe	528	645
Rochester	"	Via Sweetwater	527	625
Sagerton	"	Via Sweetwater	510	608
Hamlin	"	Via Sweetwater	492	590
Sylvester	"	Via Sweetwater	479	577
Sweetwater.	"	Via GC&SF	458	556
Mary Neal	"	Via Sweetwater	475	573
Bronte	"	Via San Angelo	473	601
San Angelo	"	Via GC&SF	441	633
Mertzon	"	Via San Angelo	469	661
Barnhardt	"	Via San Angelo	495	687
Flat Rock	"	Via San Angelo	538	730
Edruvera	"	Via San Angelo	568	760
Baldridge	"	Via San Angelo	587	780
Fort Stockton	"	Via San Angelo	605	797
Hovey	"	Via Alpine	636	833
Alpine	"	Via GH&SA	609	860

Exhibit A-13—Continued

Midland & Northwest	May concentrate at	Distance to Houston: Via T&P, Sweetwater, GC&SF.	Distance to Houston: T&P, Dallas and GC&SF.
All Points	Dallas	563	704

R. S. & P. Ry.	May concentrate at	Distance to Houston: Direct movement, via Snyder & Santa Fe.	Distance to Houston: Via Roscoe, T&P, to Dallas, thence GC&SF to Houston.
Roscoe	Dallas	527	607
Wastella	"	519	615
Hermleigh	"	508	626
Snyder	"	497	638
Dermott	"	507	648
Fluvanna	"	516	656

T&P Ry.—All Stations	May concentrate	Distance to Houston: Direct movement		Distance to Houston: T&P to Dallas thence	
Illustrations:					
Longview	Dallas	Via I-GN	233	Via Katy	466
Mineola	"	Via I-GN	240	Via Katy	420
Fort Worth	"	Via H&TC	275	Via H&TC	287
Weatherford	"	Via GCSF	352	Via GCSF	428
Cisco	"	Via Katy	394	Via Katy	486
Sweetwater	"	Via GCSF	458	Via GCSF	699

[fol. 41]

Texas Midland RR.	May concentrate at	Distance to Houston: Direct movement via Ennis & H&TC	Via Greenville, MKT thru Dallas	Via Terrell, T&P to Dallas thence to Fort Worth thence	
South of Greenville:					
Marlowe	Dallas	321	399	IGN 399	TBV 363
Quill	"	314	406	IGN 392	TBV 356
Quinlan	"	310	409	IGN 389	TBV 353
Fisher	"	307	412	IGN 386	TBV 350
Tona	"	303	417	IGN 381	TBV 345
Brin	"	300	419	IGN 368	TBV 332
Terrell	"	295	424	IGN 363	TBV 327
Cartwright	"	290	430	IGN 368	TBV 332
Kaufman	"	285	435	IGN 374	TBV 338
Scurry	"	277	442	IGN 381	TBV 345
Parvin Park	"	274	445	IGN 384	TBV 348
Rosser	"	271	448	IGN 387	TBV 351
Talbot	"	269	450	IGN 389	TBV 353
Scley	"	256	457	IGN 392	TBV 356
McKay	"	263	458	IGN 395	TBV 359
Crisp	"	262	457	IGN 396	TBV 360
Ennis	"	253	464	IGN 403	TBV 367

Exhibit A-13—Continued

Wichita Valley Railroad	May concentrate at	Distance to Houston				
		Direct movement via			Concentrate at Dallas	
		Abilene T&P Cisco Katy	Stamford and Katy	Wichita Falls, FW&DC Ft. Worth TLBV	Via Wichita Falls and Katy	Abilene T&P, Dallas and Katy
Byers	Dallas	613	601	396	539	704
Petrolia	"	609	596	391	534	700
Dean	"	600	588	383	526	691
Wichita Falls	"	591	579	374	517	682
Maples	"	587	575	372	521	678
Allendale	"	583	571	382	525	674
Holliday	"	577	564	588	531	668
Dundee	"	564	551	401	544	655
Maybells	"	549	536	416	559	640
Seymour	"	539	527	426	569	630
Bomarton	"	529	515	438	581	620
Goree	"	521	508	444	587	612
Munday	"	513	503	454	593	606
Weinert	"	506	494	459	602	597
Josselet	"	500	488	465	608	591
Haskell	"	494	482	471	614	585
McConnell	"	486	474	479	622	577
Stamford	"	479	466	487	630	570

Penick	"	.....	471	474	494	637	562
Anson	"	.....	465	480	501	844	557
Triplett	"	.....	457	487	500	851	543
Hawley	"	.....	454	491	512	555	545
Abilene	"	.....	440	505	525	668	531
Capron	"	.....	486	473	494	637	577
Sagerton	"	.....	493	481	401	644	584
Aspermont	"	.....	510	498	518	661	601
Swenson	"	.....	517	500	525	668	608
Peacock	"	.....	523	511	531	674	614
Orianna	"	.....	527	514	535	678	618
Jayton	"	.....	537	524	545	688	678
Girard	"	.....	547	534	555	698	638
Spur	"	.....	561	548	569	712	652

[fol. 42]

Texas Short Line Ry.	May concentrate at		Distance to Houston: Direct movement via Alba, Katy, Mineola, I-GN.	Distance to Houston: Via Alba and Katy through Dallas	Distance to Houston: Via Grand Saline Tex. Pac., Dallas and GC&SF.
Grand Saline	Dallas	.....	264	441	...
Grit	"	.....	258	435	439
Hoyt	"	.....	255	432	442
Alba	"	.....	...	431	443

Exhibit A-13—Continued

Wichita Falls & Southern Ry.	May concentrate at	Distance to Houston: Direct movement via Breckenridge, WFR&FW Dublin and Katy	Distance to Houston: WFS to Wichita Falls, Katy to Dallas thence Katy to Houston
Wichita Falls	Dallas	514	517
Maples	"	510	521
Lake Wichita	"	507	524
Huff	"	501	530
Luke Wilson	"	498	533
Archer City	"	489	542
Anarene	"	481	550
Olney	"	471	560
Orth	"	465	566
New Castle	"	458	573
Bullock	"	453	579
Graham	"	446	584
South Bend	"	437	594
Eliasville	"	430	601
Jimkurn	"	420	611
Gudger	"	415	616
Breckenridge	"	...	620

[fol. 44]

Statement Showing Comparison of Rates to New Orleans, La., [illegible]

From	To	Depo	
		New Orleans	H[illegible]
Oklahoma City, Okla.		87½	
Muskogee, Okla.		87½	
Durant, Okla.		78	
Ft. Smith, Ark.		78½	
Little Rock, Ark.		69	
Monticello, Ark.		69	
Shreveport, La.		59½	
Monroe, La.		57	
Alexandria, La.		54½	
Dallas (Common Point), Tex.		78	
Hearne (H. & T. C.), Tex.		78	
Howth, Tex.		73	
Paris, Tex.		78	

Tariff authority:

T. & P. Ry. 78-H, I. C. C. 2816.
F. A. Leland's 80-F, I. C. C. 1467.
Texas Line Tariff 17-I, A. C. Fonda's I. C. C. 135.
Mo. Pac. Tariff 215-J, I. C. C. A-5652.
Port Cotton Tariff No. 3, Glenn's I. C. C. A-370.
S. W. L. Cotton Tariff No. 43-O, F. A. Leland's I. C. C. [illegible]

New Orleans, La., October 24, 1923.

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(1) Memphis combination.

(2) No published through rates.

Exhibit No. A-28, Witness Gressaw

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S. C. Case 277

La., Houston and Galveston, Texas, from Representative Origin Points in the States of Oklahoma, Arkansas, Louisiana and Texas for Depot and Shipside for Export Delivery

	Shippers compressed					Carriers' privilege						Uncompressed depot delivery		
	Depot delivery		Export S. S.			Depot delivery			Export S. S.					
	Houston	Galveston	New Orleans	Houston	Galveston	New Orleans	Houston	Galveston	New Orleans	Houston	Galveston	New Orleans	Houston	Galveston
½	83	83	88	87½	88	105½	101	101	106	105½	106	117½	113	113
½	83	83	88	87½	88	105½	101	101	106	105½	106	117½	113	113
	74	74	79	78½	79	96	92	92	97	96½	97	108	104	104
½	78½	78½	83	83	83	96½	96½	96½	101	101	101	(1)147	(2)	(2)
	72	72	73½	76½	76½	87	90	90	91½	94½	94½	(1)119½	(2)	(2)
	72	72	73½	76½	76½	87	90	90	91½	94½	94½	(1)141½	(2)	(2)
½	68	68	64	68	68	70½	80	80	75	80	80	81½	92½	92½
	61½	61½	61	66½	66½	75	79½	79½	79	84½	84½	87½	(2)	(2)
½	73	73	59	73	73	65½	85	85	70	85	85	76½	97	97
	80	80	67½	80	80	96	80	80	85½	85	85½	108	80	80
	67	74½	78	67	74½	96	74	74½	96	79	79½	108	67	74½
	47½	65½	73	47½	65½	91	65½	72½	91	70½	78	103	47½	57½
	80	80	78	80	80	96	80	80	85½	85	85½	108	80	80

C. C. 1597.

[fol. 43] **Exhibit No. A-27, Witness Gressaw**

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S. C. Case 277

Switching Charge at New Orleans, La.

Press	Located on	To: Dumaine street wharf	To: Robin street wharf	To: Public cotton warehouse wharf tracks 1, 2, 3
New Orleans Compress Company	N. O. T. Co.	17.80	17.80	17.80
	I. C.	17.80	17.80	17.80
	L. R. & N.	17.80	17.80	17.80
Public Cotton Warehouse	.....	6.30	6.30	....
Terrell	N. O. P. B.	6.30	6.30	6.30
Virginia	.....	6.30	6.30	6.30
Pelican	I. C. & G. C. L.	15.30	15.30	15.30
Crescent City	I. C. & G. C. L.	15.30	15.30	15.30
Union	T. M. T. Co.	13.05	13.05	13.05
Louisiana	T. M. T. Co.	13.05	13.05	13.05

N. O. P. B. 1-G, I. C. C. 16.
T. M. T. 34-C, I. C. C. 21.
N. O. T. Co. 479-C, I. C. C. 23.
Sou. Ry. 477-D, I. C. C. 2996.
L. R. & N. 1400-E, I. C. C. A-887.
I. C. 2-A, I. C. C. 4519.
New Orleans, La., October 24, 1923.

(Here follows Exhibit A. No. 28, marked side folio page 44)

[fol. 45] **Exhibit No. A-35**

The Texas Transport & Terminal Company (Incorporated)

Steamship Agents

Engagement Note

Contract No. —

Houston, Texas, —— —, ——.

—— ——:

We beg to confirm your engagement of room for —— —— from —— to —— at rate of — cents per 100 pounds freight prepaid, shipper paying wharfage, per S. S. —— or other 100 A-1 Steamer, our option.

To be shipped from interior on or before —— —, ——.

To be delivered alongside the vessel, or at her loading berth, not later than —— —, ——.

Steamer has option of calling at other port or ports in order to load and/or discharge coal and/or other cargo and/or passengers.

It is understood and agreed that this contract is made subject to the Rules of the Maritime Committee of the Houston Cotton Exchange and Board of Trade, extracts from which are printed on the back, and all of which are made a part hereof, and on the express understanding that it is subject to all clauses and conditions contained in the Ocean Bill of Lading used by the vessel, which Bill of Lading and which rules are made part of this contract, copies of which will be furnished on application.

This contract shall not be relet or transferred without the consent of the steamship agents.

Signed in Duplicate.

The Texas Transport & Terminal Co. (Inc.), Agents.

—— ——, Local Manager.

Approved and accepted. —— ——, Shipper. —— ——, Broker.

Extract from the Rules of the Maritime Committee of the Houston Cotton Exchange and Board of Trade

Rule 1. Standard for Compressed Cotton and Linters

The basis of every freight engagement shall be a bale from a standard size gin box of 27 x 54 inches. An extra charge of $1.00 per bale shall be paid for ocean freight on all bales from boxes of greater length or width than the above size, and on all bales measuring more than 62 inches in length or 33 inches in width, when tendered to the steamer or ship agent.

Every compressed bale must be perfectly tied with sufficient steel ties or bands on delivery at vessel's loading berth.

Every bale must be completely covered with bagging to protect the contents from damage.

Every bale with protruding band ends or "spiders" shall be rejected for being in bad condition. The certificate of the Maritime Committee of the Houston Cotton Exchange and Board of Trade as to condition and measurement shall be conclusive proof and govern under this rule.

Rule 2. Density of Cotton and Linters

Every standard compressed bale shall contain a minimum density of 22½ pounds per cubic foot, and every high density compressed bale shall contain a minimum density of 34 pounds per cubic foot when delivered at vessel's loading berth, and any bales of either class containing less density than here required of that class shall be rejected; but the Ship Agent may, at his option, accept any standard bales containing less density than 22½ pounds per cubic foot, and any high density bales containing less density than 34 pounds per cubic foot, in which event the Ship Agent shall (provided such can be done without delay to the steamer and the required minimum density be secured), compress for shipper's account, at a cost not exceeding the price any available compress in Houston will compress the bale for, or accept it in the condition tendered, but charging the shipper extra freight proportionately for the additional space occupied, but not less than fifty (50¢) per bale. The Certifi-

cate of the Maritime Committee of the Houston Cotton Exchange and Board of Trade as to density shall be conclusive proof and govern under this rule and copy thereof shall be sent to the shipper.

Rule 3. Delivery of Goods

If the goods are not shipped or delivered in accordance with the contract, the Ship Agent, at his option, may cancel same, or carry forward to a later position or steamer, or re-engage at best rate obtainable, the shipper paying any freight difference and demurrage incurred. If no other cargo of such nature as the ship can carry can be secured, in a similar position, the shipper shall be responsible for dead freight. Shipper to have option of cancelling engagement, providing the Ship Agent does not furnish tonnage within a period of ten (10) days after the date of the steamer as specified in freight contract. In the event that shipper has not negotiated Custody Ocean Bills of Lading, the Ship Agent agrees upon cancellation by the shipper of contract as above, and surrender of Custody Bill of Lading, to transfer the shipment to any steamer on which freight room be provided by the shipper, that will insure earlier movement of the goods; cost of transfer to be borne by the shipper.

Notice of arrival of cotton on Through or Local Bills of Lading or the surrender of Local Bills of Lading or delivery of goods to the Ship Agent shall not release the shipper from responsibility as to the correct time of shipment or delivery of the goods.

Rule 4. Disputes

Any dispute shall be settled by arbitration in Houston, within thirty days after demand for arbitration by either party in accordance with the rules of the Houston Cotton Exchange and Board of Trade.

Rule 5. Penalties

The parties to a contract obligate themselves to pay each to the other, when and as due, in cash, at Houston, Texas, all amounts due or arising thereunder.

Rule 6. Marking of Bales of Cotton and Linters

Every bale must be well marked so that the marks can be read without any question of a doubt.

Bales must be marked with the best quality of ink, that will not fade, wash, or rub away. Marks to be placed between bands so no part of the mark will be covered by a band. No mark allowed upon the bale except brand (if any), and the mark under which the bale is moving for export. All other marks to be thoroughly obliterated so no part of any old mark will appear. Upon Round Bales the Gin Mark will be allowed to remain.

When the quality of the bagging is insufficient to carry the marks to destination, a patch of good bagging or cloth should be put on the bale under the bands to bear the mark.

Rule 7. Insurance Differences

In all claims for Difference in Insurance between first and second class liners and tramps, settlement shall be based upon the actual difference in the insurance paid by the shipper to the insurance company.

Rule 8. Definition of Terms

Immediate Shipment from the Interior: Shall mean actual shipment on cars within three days of date of contract.

Prompt Shipment from the Interior: Shall mean actual shipment on cars within ten days of date of contract.

Immediate Delivery: Shall mean delivery to the steamer by the day following the date of contract.

Prompt Delivery: Shall mean delivery to the steamer within five days of the date of contract.

Rule 9. Exceptions on Cotton and Linters

In order to obtain a receipt reading "in apparent good order and condition," each bale must be baled in the usual American method, and any other notation or qualification placed in or upon bills of lading or receipts referring to the apparent condition of the bales in other respects shall truly state the apparent condition of the particular bales tendered for shipment.

Rule 10. Weighing and Measuring Cotton and Linters

Cotton and linters shall be weighed and measured at vessel's loading berth. The measurements shall be taken on the bands for width and thickness, and from end to end for length.

[fol. 46] **Exhibit No. A-37**

Copy

I. C. C. Docket No. 14940

Application of Rates on Cotton to Gulf Ports

Watters, Hay & Company, Inc., Foreign Freight Brokers & Forwarding Agents, 340 Baronne Street

New Orleans, La., October 1st, 1925.

A Saving of 25 Cents

GENTLEMEN: We wish to advise that we are now in a position to effect a saving on all cotton shopped through the port of New Orleans for export of approximately 25¢ per bale, by compressing all standard cotton to high density at the port.

The domestic rail rate, including cost of delivery to the compress, is 5¢ per 100# less than the export rate, or approximately 25¢ per bale. By shipping the cotton in care of the Export Compress & Warehouse Company, our own compress, the carriers place the cotton into the press free of further charges on the domestic rate and the cost of compression is 75¢ per bale, including shipside delivery, which is off-set by the allowance of the steamship lines of 15¢ per 100# on high density cotton, or 75¢ per bale, thus saving you the shipside cost. Inasmuch as we are the only forwarding agents in the Gulf having our own compress, we can assure you of the very best of service, since we would certainly not permit your cotton to be placed in a compress to your detriment.

We have completed agreement with the railroads to permit cotton to go into the Export Compress & Warehouse

Company prior to surrender of original bills of lading. This means quick service and avoiding any penalty charge.

Mr. Hay is Vice-President and Mr. Watters Secretary-Treasurer of the Export Compress & Warehouse Company, of which compress, Mr. R. L. Taylor of the Grenada Cotton Compress Companies, is President.

This press is equipped to handle transit cotton, having switch tracks immediately adjoining the press, and having our own trucks to deliver the cotton to shipside, thus not being compelled to depend on outside assistance in any respect. By routing your cotton, notify Watters-Hay & Co., Inc., c/o Export Compress & Warehouse Co., you will then assure yourself of a most excellent service, and a saving of twenty five cents.

It will be our pleasure to give any further information upon request.

Yours very truly, Watters, Hay & Company, Inc.
A. A. Watters, Vice-Pres't.

AAW-HM

[fol. 47] **Exhibit No. A-38**

I. C. C. Docket No. 14940

Application of Rates on Cotton to Gulf Ports

Extracts from J. H. Glenn's Port Cotton Tariff No. 15-A, ICC A-525, which names rates on cotton from all Southeastern producing stations to Norfolk, Va., Lynchburg, Va., Petersburg, Va., Richmond, Va., Roanoke, Va., Suffolk, Va., West Point, Va., Hopewell, Va., Wilmington, N. C., Charleston, S. C., Savannah, Ga., Brunswick, Ga., Jacksonville, Fla., Pensacola, Fla., Mobile, Ala., Gulfport, Miss., New Orleans, La., and points taking same rates or made with relation thereto

Note No. 11. Application of Rates to Shipside.—Rates named in this tariff will not include delivery to shipside.

Note No. 12. Definition of the Term "Shipside."—The term "shipside" as used herein, means, according to the

customs or practices of various ports, the delivery to ships, barges or other water craft lying, except as may otherwise be provided, alongside wharf properties owned or operated by, or in connection with, lines named herein reaching the various ports.

NOTE No. 13. Rates to Shipside for Export.—When for export and to apply only as proportions of through export rates, and export bills of lading showing through rates to foreign destinations are issued, rates will be five (5) cents per 100 pounds higher than to the ports proper. Under no circumstances, will bills of lading be issued for shipside delivery.

Export cotton moving on through bills of lading shall not be delivered to port compresses until first receipted for to the rail carrier by the steamship line to which final delivery is required to be made.

[fol. 48] I. C. C. Docket No. 14940

Application of Rates on Cotton to Gulf Ports

Texas Intrastate Rates as Shown in Item 405 on Page 29 of Texas Lines Tariff No. 17-D, A. C. Fonda's I. C. C. 135, Including Cost of Compressing to the Extent Shown Below

Distances, miles		Rates	Amount of compressing charge that will be absorbed out of these rates
20 miles and less		28	0
25 miles and over	20	30½	0
30 " " "	25	33	0
35 " " "	30	35	0
40 " " "	35	38	0
45 " " "	40	40	0
50 " " "	45	43	0
55 " " "	50	45	0
60 " " "	55	47½	0
65 " " "	60	50	0
70 " " "	65	52	0
75 " " "	70	55	0
80 " " "	75	57	1

Distances, miles					Rates	Amount of compressing charge that will be absorbed out of these rates
85 miles and over				80	59½	3½
90	"	"	"	85	62	6
100	"	"	"	90	64½	8½
110	"	"	"	100	65½	9½
120	"	"	"	110	67	11
130	"	"	"	120	68	12
140	"	"	"	130	69½	13½
150	"	"	"	140	71½	15½
160	"	"	"	150	73	17
175	"	"	"	160	74½	18
190	"	"	"	175	76½	18
210	"	"	"	190	79	18
Over 210 miles					80	18

NOTE.—The extent of the absorption of this compressing is stated in Item 30, on page 15, of this same tariff.

[fol. 49]

Exhibit No. A-72

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S C. Case 277

Switching Charge at New Orleans, La.

Press	Located on	To— Dumaine St. wharf	Robin St. Wharf	Public Cotton Warehouse Wharf tracks Nos. 1-2-3.
New Orleans Compress Company	N. O. T. Co.	1780	1780	1780
	I. C.	1780	1780	1780
	L. R. & N.	1780	1780	1780
Public Cotton Whse.	N. O. P. B.	7.00	7.00	7.00
Terrell	N. O. P. B.	7.00	7.00	7.00
Virginia, Mississippi	N. O. P. B.	7.00	7.00	7.00
Commercial	N. O. P. B.	7.00	7.00	7.00
Federal Comp. & Whse. Co	I. C.-G. C. L.	15.30	15.30	15.30
Union	T. M. T. Co.	13.05	13.05	13.05
Louisiana	T. M. T. Co.	13.05	13.05	13.05
Union Whse. Co. Inc	La. Sou.	15.30	15.30	15.30

Tariff authority:

N. O. P. B., 1-J, I. C. C. 25.
L. R. & N., 1400-F, I. C. C. A-944.
N. O. T. Co., 479-D, I. C. C. 24.
La. Sou. 2, I. C. C. 4.
G. C. L., 487-E, I. C. C. A-672.
I. C. R. R., 2-B, I. C. C. 6700.

(This exhibit brings up to date information formerly shown in exhibit A-27 (Rec. p. 803, Witness Glessow).
New Orleans, La., April 19, 1926.

(Here follows Exhibit No. A-73, marked side folio page 50)

Statement Showing Comparison of Rates to New Orleans, La., Houston a
and Shipside

To.....	New Orlea	
From	A	B
Oklahoma City, Okla.	87½	88
Muskogee, Okla.	87½	88
Durant, Okla.	78	79
Fort Smith, Ark.	78½	83½
Little Rock, Ark.	69	74
Monticello, Ark.	69	74
Shreveport, La.	62	67
Monroe, La.	58½	63½
Alexandria, La.	56	61
Dallas (Tex. Common Pt.), Tex.	78	67½
Hearne, Tex.	78	78
Howth, Tex.	(1)	(1)
Paris, Tex.	78	67½

References:

A—Depot Delivery.
B—Export Shipside Delivery.
C—Difference B over A except as noted.

Tariff Authority:

T. & P. 78-K, I. C. C. 3220.
S. W. L. 80-G. I. C. C. 1776.
Mo. Pac. 215-L, I. C. C. A-6572.
Fonda 50, I. C. C. 166.
Fonda 170, I. C. C. 135.
S. W. L. 43-O, I. C. C. 1597.

6—Difference B under A.
(1)—No compress at Howth, Tex.

Note.--Uncompressed rates to not apply to shipside.

(This exhibit brings up to date rates formerly shown in exhibit
and the difference under Column C was not specified in the former exh

New Orleans, La., April 19, 1926.

Exhibit No. A-73

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S. C. Case 277

uston and Galveston, Texas, from Representative Origin Points in the States of Oklahoma, Arkansas, Louisiana, and Texas for Depot Shipside for Export Delivery, Showing Difference in Rates for the Two Deliveries

Shippers compressed								Compressed in transit								Uncompressed (Note)		
ew Orleans		Houston			Galveston			New Orleans			Houston			Galveston		New Orleans	Houston	Galveston
B	C	A	B	C	A	B	C	A	B	C	A	B	C	A	B	C	A	A	A
88	½	83	88	5	83	88	5	105½	106	½	101	106	5	101	106	5	117½	113	113
88	½	83	88	5	83	88	5	105½	106	½	101	106	5	101	106	5	117½	113	113
79	1	74	79	5	74	79	5	96	97	1	92	97	5	92	97	5	108	104	104
83½	5	78½	83½	5	78½	83½	5	96½	101½	5	96½	101½	5	96½	101½	5	(2)	(2)	(2)
74	5	72	77	5	72	77	5	87	92	5	90	95	5	90	95	5	(2)	(2)	(2)
74	5	72	77	5	72	77	5	87	92	5	90	95	5	90	95	5	(2)	(2)	(2)
67	5	62	67	5	62	67½	5½	80	85	5	80	85	5	80	85½	5½	92	92	92
63½	5	62	67	5	62	67	5	76½	81½	5	80	85	5	80	85	5	88½	92	92
61	5	56	61	5	56	61½	5½	74	79	5	74	79	5	74	79½	5½	86	86	86
67½	ø10½	62	67½	5½	62	67½	5½	96	85½	ø10½	80	85½	5½	80	85½	5½	108	80	80
78	..	56	61½	5½	56½	62	5½	96	96	..	74	79½	5½	74½	80	5½	108	67	74½
(1)	..	(1)	(1)	..	(1)	(1)	..	91	91	..	65½	71	5½	72½	78	5½	103	47½	57½
67½	ø10½	62	67½	5½	62	67½	5½	96	85½	ø10½	80	85½	5½	80	85½	5½	108	80	80

xhibit A-28 (Rec. p. 804) Witness Giessow. The figures are rearranged to bring the shipside rates to each port next to the domestic rates ner exhibit.)

[fol. 51] **Exhibit No. A-74**

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S. C. Case 277

Statement Showing Receipts and Disposition of Cotton at New Orleans, La., for Season August 1, 1924, to July 31, 1925. (See Note.)

Receipts		2,104,139	
Disposition:			
Export:			
Great Britain	477,080		
France	90,822		
Continent	811,200		
Total		1,379,102	
Coastwise		245,929	
Rail to Northern mills		1,776	.09 of 1%
Rail to Western mills		4,786	.23 of 1%
Rail to Southern mills		439,024	20.81%
Local consumption		34,949	1.66%
		2,105,566	

NOTE.—Excess disposition over receipts taken from stock on hand from season 1922-1923.

Statement showing receipt and disposition of cotton at New Orleans, La., for season August 1, 1923, to July 31, 1924.

Receipts			1,543,760
Disposition:			
Export:			
Great Britain		302,608	
France		89,271	
Continent		553,348	
Total			945,227

Coastwise	111,185
Rail to Northern mills	3,459
Rail to Western mills	686
Rail to Southern mills	441,723
Local consumption	38,648
	1,540,928
Carry over	2,832
	1,543,760

Figures furnished by Secretary of New Orleans Cotton Exchange.

Giessow's Exhibit A-29 (Rec. p. 804) shows above information for season 1922-1923.

New Orleans, La., April 19, 1926.

(Here follows Exhibit No. A-75, marked side folios page 52)

[fol. 53] **Exhibit No. A-78**

I. C. C. Docket 13991. I. C. C. Docket 14940. L. P. S. C. Case 271

Handling Charges at New Orleans, La., Applicable on Various Commodities, in Cents per 100 Pounds

Article	Charge
Cotton in Bales	5
Articles, N. O. S.	5
Asbestos	3½
Bagging, Hemp or Jute	3¼
Burlap or Gunny Bagging	3¼
Bags, Burlap and Gunny	3¼
Beans	3½
Beet Pulp	3½
Borax	3½
Calcium Arsenate	3½
Canned Goods	3½
Cement	2½
Chalk, crude	3½
Clay	3½
Cob Meal	3½

Statement of Rat

From Dallas, Texas	Houston, Tex., shipside	
1. Carriers compression to standard density between origin and port:		
A—Rate to port (shipside)	85½	
2. Carriers compression to standard density between origin and port with high density compresion at the port:		
A—Rate to port	(a) 82	(a)
B—High density compression including shipside delivery	15	
C—Total	97	
3. Movement flat to port with high density compression thereat:		
A—Rate to port	(a) 82	(a)
B—High density compression including shipside delivery	15	
C—Total	97	
4. Compression at Dallas from flat to high density (carriers absorbing 18 cents per 100 pounds and shippers balance):		
A—Rate to port (shipside)	85½	
B—Extra compression cost	(c) 2	(c)
C—Total	87½	
Advantage of Dallas Concentrator over port concentrator through high densitying cotton:		
2 versus 4	9½	
3 versus 4	9½	

Note 1.—Based on compliance with decision in I. C. C domestic rate exceeds export shipside rate.)

Note 2.—Based on compliance with decision in I. C.C.

(a)—Two cents (2¢) wharfage added.

(b)—Fifteen cents (15¢) per 2,000 pounds (¾ cent

(c)—Based on high density in lieu of standard densi

Col. 1 . . . Rates paid without taking advantage of . . .

[fol. 52]

Exhibit No. A-75

I. C. C. Docket 13991. I. C. C. Docket 14940. L.

Statement of Rates on Cotton, in Cents per 100 Pounds, for Export, Including Wh

From Dallas, Texas	Based on present rates to					Based	
	Houston, Tex., shipside	Texas City, Tex., shipside	Galveston, Tex., shipside	New Orleans, La., shipside		Houston, Tex., shipside	Texas City, Tex., shipsid
				Col. 1	Col. 2		
1. Carriers compression to standard density between origin and port:							
A—Rate to port (shipside)	85½	85½	85½	85½		85½	85½
2. Carriers compression to standard density between origin and port with high density compresion at the port:							
A—Rate to port	(a) 82	(a) 82	(a) 82	(b) 96¾	85½	(a) 85½	(a) 85½
B—High density compression including shipside delivery	15	10	15	15	15	15	10
C—Total	97	92	97	111¾	100½	100½	95½
3. Movement flat to port with high density compression thereat:							
A—Rate to port	(a) 82	(a) 82	(a) 82	108¾		(a) 85½	(a) 85½
B—High density compression including shipside delivery	15	12	15	15		15	12
C—Total	97	94	97	123¾		100½	97½
4. Compression at Dallas from flat to high density (carriers absorbing 18 cents per 100 pounds and shippers balance):							
A—Rate to port (shipside)	85½	85½	85½	85½		85½	85½
B—Extra compression cost	(c) 2	(c) 2	(c) 2	(c) 2		(c) 2	(c) 2
C—Total	87½	87½	87½	87½		87½	87½
Advantage of Dallas Concentrator over port concentrator through high densitying cotton:							
2 versus 4	9½	4½	9½	24¼	13	13	8
3 versus 4	9½	6½	9½	36¼		13	10

Note 1.—Based on compliance with decision in I. C. C. Docket 14940 by increasing domestic rates to Texas ports 3½ domestic rate exceeds export shipside rate.)

Note 2.—Based on compliance with decision in I. C.C. Docket 14940 by reducing export shipside rates to Texas ports

(a)—Two cents (2¢) wharfage added.

(b)—Fifteen cents (15¢) per 2,000 pounds (¾ cent per 100 pounds) added for tollage.

(c)—Based on high density in lieu of standard density compression at Dallas ($1.00 per bale).

Col. 1.—Rates paid without taking advantage of concentration and tollage absorption.

Col. 2.—Rates protected by claim under concentration and tollage absorption provisions based on first concentration.

From Dallas, Texas	Houston, Tex., shipside	Texas City, Tex., shipside	Galveston, Tex., shipside	New Orleans, La., shipside		Houston, Tex., shipside	Texas City, Tex., shipside
				Col. 1	Col. 2		
1. Carriers compression to standard density between origin and port:							
A—Rate to port (shipside)	85½	85½	85½	85½		85½	85½
2. Carriers compression to standard density between origin and port with high density compresion at the port:							
A—Rate to port	(a) 82	(a) 82	(a) 82	(b) 96¾	85½	(a) 85½	(a) 85½
B—High density compression including shipside delivery	15	10	15	15	15	15	10
C—Total	97	92	97	111¾	100½	100½	95½
3. Movement flat to port with high density compression thereat:							
A—Rate to port	(a) 82	(a) 82	(a) 82	108¾		(a) 85½	(a) 85½
B—High density compression including shipside delivery	15	12	15	15		15	12
C—Total	97	94	97	123¾		100½	97½
4. Compression at Dallas from flat to high density (carriers absorbing 18 cents per 100 pounds and shippers balance):							
A—Rate to port (shipside)	85½	85½	85½	85½		85½	85½
B—Extra compression cost	(c) 2	(c) 2	(c) 2	(c) 2		(c) 2	(c) 2
C—Total	87½	87½	87½	87½		87½	87½
Advantage of Dallas Concentrator over port concentrator through high densitying cotton:							
2 versus 4	9½	4½	9½	24¼	13	13	8
3 versus 4	9½	6½	9½	36¼		13	10

NOTE 1.—Based on compliance with decision in I. C. C. Docket 14940 by increasing domestic rates to Texas ports 3½ c domestic rate exceeds export shipside rate.)

NOTE 2.—Based on compliance with decision in I. C.C. Docket 14940 by reducing export shipside rates to Texas ports 3½

(a)—Two cents (2¢) wharfage added.

(b)—Fifteen cents (15¢) per 2,000 pounds (¾ cent per 100 pounds) added for tollage.

(c)—Based on high density in lieu of standard density compression at Dallas ($1.00 per bale).

Col. 1.—Rates paid without taking advantage of concentration and tollage absorption.

Col. 2.—Rates protected by claim under concentration and tollage absorption provisions based on first concentration.

Tariff Authority:

Fonda's 50, I. C. C. 166.
Leland's 43-0, I. C. C. 1597.
Fonda's 17-D, I. C. C. 135.
New Orleans, La., April 19, 1926.

L. P. S. C. Case 277

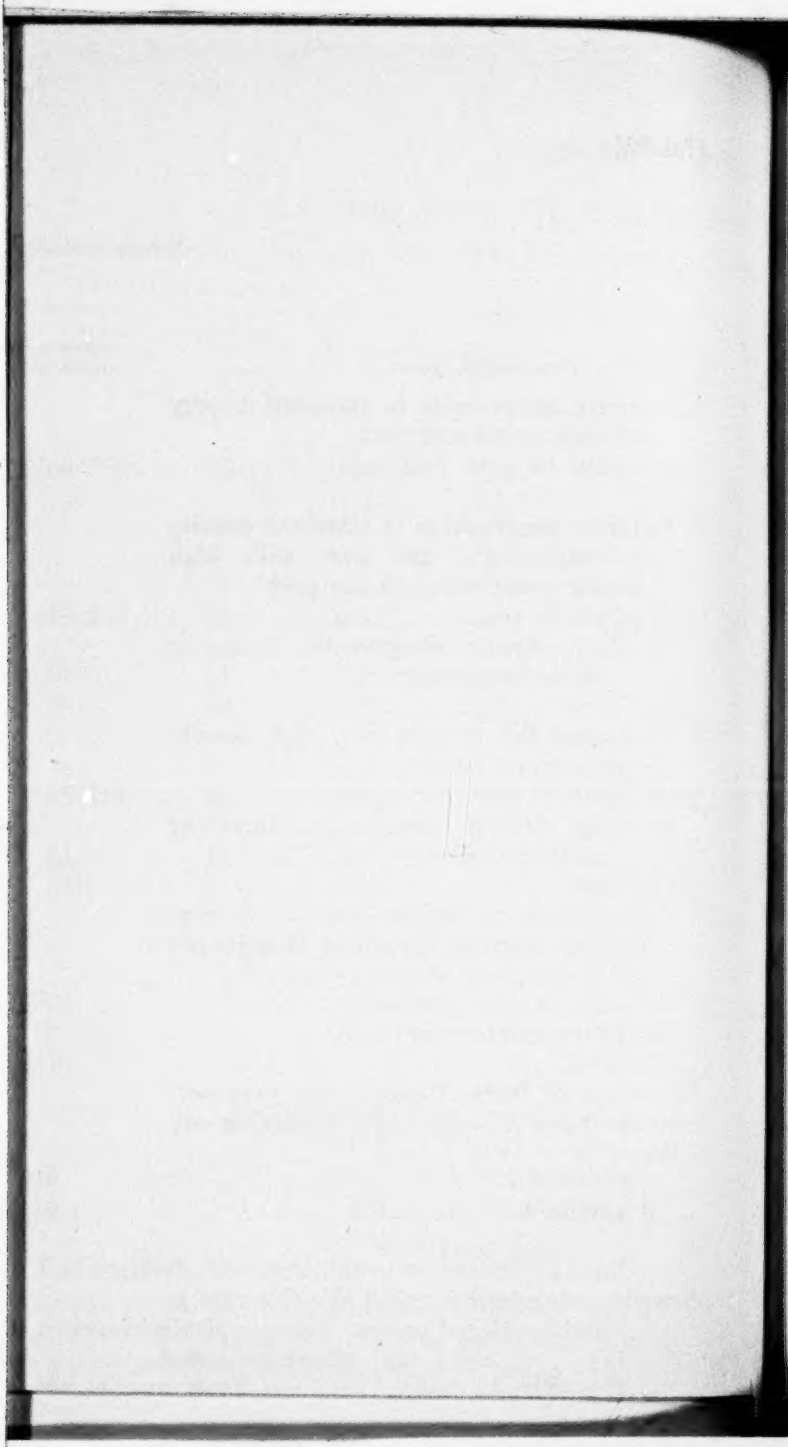
Wharfage at Texas Ports and Tollage at New Orleans

sed as shown in Note 1 to				Based as shown in Note 2 to				
xas Tex., pside	Galveston, Tex., shipside	New Orleans, La., shipside		Houston, Tex., shipside	Texas City, Tex., shipside	Galveston, Tex., shipside	New Orleans, La., shipside	
5½	85½	85½ Col. 1	Col. 2	82	82	82	82 Col. 1	Col. 2
5½	(a) 85½	(b) 96¾	85½	(a) 82	(a) 82	(a) 82	96¾	82
0	15	15	15	15	10	15	15	15
5½	100½	111¾	100½	97	92	97	111¾	97
5½	(a) 85½	108¾		(a) 82	(a) 82	(a) 82	108¾	
2	15	15		15	12	15	15	
7½	100½	123¾		97	94	97	123¾	
5½	85½	85½		82	82	82	82	
2	(c) 2	(c) 2		84	84	84	84	
7½	87½	87½		84	84	84	84	
	13	24¼	13	13	8	13	27¾	13
	13	36¼		13	10	13	39¾	

3½ cents and continuing present export shipside rates. (No change to New Orleans account present

ts 3½ cents with New Orleans equalized on export rate.

ion. Where cotton has previously been concentrated a 3½ cent penalty is added.



Article	Charge
Coffee	3½
Copper, Ingot or Pig	3½
Copra	2½
Cotton Goods	4
Cottonseed Meal & Cake Flaxseed Meal & Cake Peanut Meal & Cake, etc.	2½
Cotton Ties	3¼
Extract, bark or tanning	3½
Feed	3½
Fertilizer & Fertilizer Material	2½
Fruit	4
Fuller's Earth	3½
Grain & Grain Products	3½
Graphite Dust & Facing	3½
Hemp	4
Cottonseed in sacks	2½
Knitting Factory Products	4
Leaf Tobacco	3½
Lime, Acetate	3½
Lime, Nitrate of	#70
Marble Dust	3½
Molasses	3½
Ochre	3½
Ore Asbestos	3½
Ore Arsenic	3½
Ore Beauxite	3½
Ore Magnesite	3½
Ore Manganese	3½
Ore Tailings	3½
Packing House Products	3½
Paper Wrapping & Newsprint	3½
Paper printing other than newsprint	3½
Peas	3½
Peanuts	3½
Phosphate, Rock & Soft Phosphate	3½
Plaster, Wall	3½
Rags	3½
Rice & Rice Products	2½
Salt	2½
Salt Cake	3½

Article	Charge
Seeds	3½
Shingles	4
Sugar	3½
Vegetables	4
Waste	4
Waste Paper	3½
Wood Pulp	3½

[fol. 54-1] **Exhibit No. A-85—J. J. Morrissey**

I. C. C. Docket No. 14940

Application of Rates on Cotton to Gulf Ports

I. C. C. Docket 11965, Testimony of Witness J. J. Morrissey, Record Pages 768 to 789, inclusive

Direct examination.

By Mr. Ross:

Q. Mr. Morrissey, I wish you would state your railroad experience and your present connection with the Santa Fe Railway.

A. I joined the accounting Department of the Santa Fe in 1892. I left them in 1901 and became Superintendent of the Leland and Gulf Transport Steamship Lines. I returned to the Santa Fe, to the General Manager's Department, in 1906. The Santa Fe released me in 1908 to take part in their cattle raisers' case in which 53 roads were interested. I worked pretty near a year on that case, for Judge McHigh, of Omaha, and Judge Terry of Galveston, and was afterwards assigned to assist the Master in St. Louis in his findings together with Examiner Seymour, of the Interstate Commerce Commission. We worked there about five months. When that case was disposed of, I returned to the office of the Vice-President and General Manager. I left them again in 1915. I engaged in contracting and stevedoring. I was in that line of business until 1918, when the war put me out of business. I returned again to

the Santa Fe and I am now occupied as statistician in the office of the Vice-President and General Manager, looking after, analysing operating expenses.

Q. I believe you want to offer your first exhibit.

A. I have prepared some photographs here, which comprise seventeen sheets, covering the average out-of-pocket freight train cost and other incidental transportation expenses in connection with the haul of 540 bales of cotton.

Exam. Mullen: This will be received and marked Exhibit No. 110.

(The document was thereupon received in evidence, marked, "Defendants Exhibit No. 110, Witness Morrissey," and is forwarded herewith.)

The Witness: This cotton was shipped flat all the way from a point in Oklahoma one hundred miles north of Gainesville, Texas, through Galveston. I have also worked out figures covering the cost of a similar shipment of 540 bales moved flat from a point in Oklahoma 100 miles north of Gainesville into Gainesville, compressed there and afterwards moved to Galveston.

[fol. 54-2] The ascertained cost of flat cotton, as shown on the second sheet of this exhibit, is worked out in detail, on a ton-mile basis, covering the transportation movement, and also the cost of the surplus movement of empty cars, the per diem, at $1.00 per day per car on the surplus cars while en route Gainesville to Galveston, the estimated cost of switching these surplus cars at Galveston to and from, that is, the loaded cars to the compress and the empty cars from the compress back to the railroad yards, and also a back haul on 75 per cent of the surplus cars back to Somerville, Texas, which is the assembling point for cars for lumber loading in East Texas. There is also an item of two days per diem on the surplus cars at Galveston and one day per diem on the movement back to Somerville, 142 miles, making a total cost of out-of-pocket expenses of $558.16.

The next sheet, marked Exhibit No. 2, covers the movement of 540 bales compressed at Gainesville, worked out on a ton-mile basis and applying the average ton mile cost as shown on the next sheet, marked Exhibit A, which cost is $1.50 per thousand gross-ton-miles, covering locomotive re-

pairs, engine house expenses, fuel, other locomotive supplies, engine and trainmen and train supplies. Three months average was used in order to get a fair average cost.

To follow the movement of this compressed cotton, the total ton miles amounts to 179,022. This, at $1.50 per thousand amounts to $268.53.

Switching at Gainesville to and from the compress, one hour at $9.50 per hour, exhibits "B" and "C," which cover this feature; per diem while unloading at compress at Gainesville one day for each car, $20; per diem while loading at compress, Gainesville, the cotton that had arrived in 20 cars and moved out in 8 cars, $8.00,—a total cost of $306.03, a difference of $252.13 in the flat cotton as compared with the compressed cotton, or an increase in expenses, flat compared to compressed, of 82.39 per cent.

The figures covering the details of the switch engine cost are shown on Exhibit C. The figures covering the number of bales per car are shown on Exhibit "D," and are the result of a check made at Galveston freight station of 2,285 cars, containing 153,330 bales, which turned out an average number of bales per car of 67, compressed.

The average of 565 cars of flat cotton, containing 15,114 bales, was 27 bales per car.

Mr. E. E. Taylor, Superintendent at Cleburne, of the Gulf, Colorado and Santa Fe Railroad, at the request of the general manager of the Gulf, Colorado & Santa Fe, person-[fol. 54-3] ally made a test at Gainesville of the service to and from the compress. A copy of his report is contained in this file on page 9. The details of his report are shown on page 10. He pulled 12 cars in 8 minutes. He left the south lead with 8 cars and spotted those eight cars at the compress in four minutes. He made another test, which developed four minutes, and his fourth test three minutes.

The cars handled in making tests from yard to compress were coupled and stood first out. No coupling to be made on cars standing on compress track which were used in making this test. Distance from south lead of main yard to head block of compress switch about 935 feet.

From pages 11 to 17, inclusive, contain the car numbers and details showing the dates placed and the dates released of 148 cars which were unloaded at the compress at Gainesville. That is on pages 11 to 14 inclusive. On pages 15

to 17, inclusive, the details are shown of the number of cars of cotton loaded out from the press at Gainesville. It also shows the date placed for loading and the date loading completed.

By Mr. Hershey:

Q. Mr. Morrissey, where you have shown the expense of handling this cotton in either the uncompressed or the compressed condition, that is the expense that is simply chargeable to the operatioon only?

A. Well, stated here that—Exhibit A says:

"Above expenses cover what are usually known as out-of-pocket expenses, and do not include maintenance of way and structures, or any overhead transportation, equipment, traffic or general expenses, as defined by the Interstate Commerce Commission."

Mr. Hershey: You did. That is right.

The Witness: I now submit Exhibit No. 111.

Exam. Mullen: That will be received.

(The statement was thereupon received in evidence, marked "Defendants Exhibit No. 111, Witness Morrissey," and is forwarded herewith.)

The Witness: This exhibit applies the excess cost of Exhibit No. 110 to the cotton movement from Oklahoma to Galveston from August to December, 1920, and also compares the car-days on each shipment flat and compressed.

The excess cost of moving 540 bales, compared with the cost of moving 540 bales compressed at Gainesville was $252.13. Now, I deducted from that the back-haul and the per diem, which amounted to $79.34, and left a net excess cost of $172.79.

[fol. 54-4] From August to December, inclusive, the compressed cotton from Oklahoma to Galveston in bales amounts to 32,124. Applying the net excess cost——

Exam. Mullen: It will not be necessary to read all of that into the record, Mr. Morrissey.

The Witness: No, sir, the excess cost of that was $10,279.08.

I now come to the car-days, 32,124 and the 3,806 flat bales made a total of 35,930, which we have allotted on the basis of the out-turn of the flat cotton at Galveston, namely, 27 bales per car. This brought a result of 1,331 cars. That multiplied by the 511 miles, which was the distance from a point 100 miles north of Gainesville, made car miles loaded 680,141.

The standard set by the Railroad Administration and afterwards adopted by the American Railway Association, and is still looked upon as a standard of excellence, is 30 car miles per car-days for freight equipment. We have divided the loaded car miles by 30 car-miles per car day, and this arrived at 22,671 car days for flat cotton.

Now, without going into the details of the other, the car days on the compressed cotton, using the same formula, amounted to 12,931, or an excess car days, flat cotton over compressed cotton of $20,019.08, which does not include any overhead expenses or interest on the investment.

By Mr. Ross:

Q. Now, Mr. Morrissey, those figures represent the actual increase in cost, out of pocket cost, to the carriers, compressed versus uncompressed?

A. As worked out here, yes, sir.

Q. Now, a carrier ought to earn a fair return on the property invested to render the service, should it not, which would include, of course, maintenance of way, superintendence and other items which are not included in the cost of rendering this service?

A. Yes, sir. This cotton should contribute a fair proportion to the upkeep of the property.

I now offer my Exhibit No. 112.

Exam. Mullen: That will be received.

(The statement was thereupon received in evidence, marked "Defendants Exhibit No. 112, Witness Morrissey," and is forwarded herewith.)

[fol. 54-5] The Witness: This exhibit is introduced for the purpose of showing what the total cost of freight service is on the Santa Fe road as compared with the $1.50 for transportation purposes only.

Now, we can dismiss this very briefly. The cost of all freight operating expenses and maintenance amounts to $4.99 per thousand gross ton miles, and on the basis of 1,000 net ton miles, the cost was $11.19.

That is all the figures I made.

By Mr. Ross:

Q. Now, with reference to your figures on the car service at Galveston, that was taken from actual performance, was it?

A. Yes, sir, I made a particular investigation at the yard's office as to general detention of cars as to the length of time it took an engine to place those cars and return the empties after the cars had been unloaded.

By Mr. Hershey:

Q. Mr. Morrissey, in basing your expenses in the handling of compressed cotton on the proposition that cotton might move 100 miles flat and 411 miles compressed, you used that basis because 100 miles north of Gainesville would be the end of the Gulf, Colorado and Santa Fe and the end of the freight division on the north of which Gainesville is the end on the south?

A. Well, 100 miles is the ideal operating division, because you pay your men on the basis of 100 miles and you get fuller service and better service from an operating point of view than you do when breaking up your trains and working in between divisions.

Q. Well, as a matter of fact, uncompressed cotton moving into the compresses Gainesville and north, ordinarily would move very much less than 100 miles, would it not, so that this basis which you have used is a very liberal one?

A. Well, as I said before, it is the most economical one. It is the ideal one to use. It is based from the transportation point of view because that is what the transportation man aims at, is to get every mile he can out of what he pays for wages.

Q. You would never move flat cotton into a compress to exceed 100 miles, would you?

A. Decidedly no. I consider that would be a losing proposition.

Q. Probably, however, that would be the actual movement?

A. Yes.

[fol. 54-6] By Mr. Ross:

Q. Mr. Morrissey, from your experience and judgment, would you say that the Santa Fe Railroad is operated about as economically and as judiciously as any other line of railroad in the country?

A. Well, I should say so. I do not know of anything that is much closer today than the operating expenses of the Santa Fe Railroad.

Exam. Mullen: That finishes the direct?

Mr. Ross: Yes, Sir.

Exam. Mullen: You may cross-examine, Mr. Fulbright.

Cross-examination.

By Mr. Fulbright:

Q. I understand the purport of this exhibit to be, Mr. Morrissey, that the operating cost of handling 540 bales flat from a point 100 miles the other side of Gainesville into Galveston would be $252.13 more than the operating cost of handling the same number of bales to Gainesville, compressing it there and hauling it from Gainesville to Galveston?

A. Yes, sir, that is the way it works out.

Q. Now, if the railroad were paying $1.00 per bale, have you deducted $1.00 per bale for the cost of compression in making this? You have not indicated that.

A. I did not go into rates at all. I do not know anything about rates.

Q. If the railroads do save $1.00 per bale, or 20 cents per hundred pounds, it would save $540.00 by hauling that cotton through flat. That would more than offset your $252.00 increase in operating costs, would it not?

A. Yes, but please bear in mind that this $252.13 is only the out of pocket expense. It does not take in a fair proportion of the operating and maintenance of the road at all.

Q. I know that, and we are just looking at it from a purely operating standpoint now, and that is that you are

saving an operating expense of $252, but you are also paying out $1.00 per bale to have this cotton compressed.

A. Well, I do not know what the compress charges are.

Q. Well, you did not go into that feature at all?

A. I did not.

[fol. 54-7] Q. Now, the only basis you used for your average loading of 27 bales of flat cotton was the figures made here at Galveston for the test period?

A. That is the figures that are in these exhibits, yes, sir, actual out-turn of the cars in Galveston.

Q. In your investigations, have you undertaken at any time to ascertain how much flat cotton could be loaded in a car economically?

A. I went to see the loading foreman at the freight depot at Galesvton in this connection, and I cross examined him on the cotton platform as to the out-turn of the cars along the lines I have shown here, and he told me that more cotton could be loaded in the cars, both flat and compressed,—not one, but both of them—than the out-turn showed,—more could be put in there. Of course that is easily demonstrated.

Q. Yes. But this was simply based on a certain period that you had here at Galveston?

A. Just exactly the service that the Santa Fe rendered to the public.

Q. Now, I was interested in the statement, the list shown at page 11 and pages following, in your main exhibit, No. 110. Have you a copy of the instructions and the report with you upon which you made this up?

A. You mean the original letters?

Q. Yes. You requested this information from your representative at Gainesville?

A. Yes, Superintendent Taylor, at Cleburne, furnished this information.

Q. Was nothing except the information in here shown in this letter?

A. That letter of transmittal, and here is a copy of the reply I sent him, over Mr. Pettibones name, that I thought he had procured sufficient information without burdening the clerks up there with any more work of this kind.

Q. Have you a copy of your request for the information?

A. I do not know that I have. I have a great big file on

that matter and I do not believe I have. I can get it, though I expect.

[fol. 54-8] Q. Well, what you expected was what this indicates to be furnished?

A. Here it is. It was a telegram.

Q. Let me see it. It may not be necessary to read it into the record.

A. It was a personal telegram to E. C. Taylor, Cleburne:

"Let me know how long it will take switch engine Gainesville to switch car cotton from yard to compress and switch car back to yard when loaded based on the average time used by yard engines in this work. Also want average car detention at compress while unloading and average car detention while loading. Handle personally as you may have to testify in the case. Mail reply addressed to J. P. Cowley, Personal, using symbol M-9. Signed F. G. Pettibone."

Q. You have in here the reply, have you not?

A. The reply is there, but I think I sent him a second telegram. Here it is, yes, another personal wire:

"Figure time Gainesville on one car, 8 cars and 20 cars showing engine time separate for each lot in placing at the press and moving cotton back to yard, when loaded. It may be that there is no material diffeernce in time for each lot, but we must have figures that will stand the test. Try and let me have this information by Tuesday."

This was the correspondence I had with Mr. Taylor.

Q. But those are the instructions which you gave him?

A. Those are the instructions.

Q. Now, you will note this report shows first the date the car was placed at the press?

A. Yes, sir.

Q. Now, did he indicate the day the car arrived at the station at Gainesville?

A. No.

Q. No. He only indicated the spotting for unloading, or the date it was placed?

A. The date it was placed.

[fol. 54-9] Q. And therefore, all this exhibit shows is how long it took the compress to unload it and release it, is it not?

A. Yes, sir, the movement to and from the compress.

Q. And it does not show what amount of detention there may have been from the time the car arrived in Gainesville until it was placed at the compress for unloading?

A. I have his original here:

"Mr. F. G. Pettibone, vice-president and general manager, Galveston, Texas. Your wire——

Q. Is not that in here?

A. Well, now, if it is, it may not be copied correctly. Here is the original.

Exam. Mullen: It is page 9 of your exhibit, Mr. Morrissey. That is sufficient.

The Witness: Well, this shows just exactly the time taken up in going to the press and from the press.

From Mr. Fulbright:

Q. The letter agrees with the statement at page 11 and following?

A. It does.

Q. Now, then, at pages 15 and following is the last statement, and that shows the day the car was placed for loading from the compress?

A. Yes, sir.

Q. And the date the loading was completed?

A. Exactly.

Q. But it does not show how long it took that car to get out of Gainesville, does it?

A. Well, that would be a Santa Fe proposition. That would not be up to the compress at all.

Q. So that this exhibit does not undertake to show the amount of detention there was at Gainesville on these cars?

A. It shows the time lost in getting the cotton compressed.

Q. It shows the time that it took the compress to unload the cotton, and then it shows the time that it took them to load it back into the car after the car was placed at the compress. That is what the report shows is it not?

[fol. 54-10] A. Yes.

Q. On page 4, do you consider that the item of locomotive repairs would normally be as high an item of expense, or approximately so, as the item of salaries of engine and train men?

A. Engine and train men are 41 cents per thousand, and locomotive repairs 35 cents.

Q. There is very little difference, is there not?

A. Six cents.

Q. Do you think that represents a normal condition?

A. Yes. There is three months here, and there is very little difference between the three months in repairs.

Q. The annual repairs of the Santa Fe, on file with the Interstate Commerce Commission, would show the total amount of each of those items under the appropriate account, would it not?

A. It most decidedly would.

Q. And from those reports, we could verify that and see what the railroad's proportion would be for a year?

A. Yes, sir.

Mr. Fulbright: I am wondering if there would be any objections to my referring to figures in the published reports, for the purpose of ascertaining the percentage of them,—published reports on file with the Commission.

Exam. Mullen: You mean in your Brief?

Mr. Ross: I think the Commission has access to them.

Exam. Mullen: You are going to refer to it and call our attention to it by citing the official reports to the Commission?

Mr. Fulbright: Yes.

Exam. Mullen: That will be all right.

The Witness: Bear this in mind, that you have started a new era in September, and that was one of the things that actuated me in selecting September, October and November, because the decision No. 2 went into effect.

[fol. 54-11] By Mr. Hershey:

Q. Whose decision No. 2, Mr. Morrissey?

A. Wage Board decision No. 2 was paid in August on the Santa Fe and covered back pay, back to May, and about the highest increase in that decision No. 2 is in connection with repairs to locomotives, so that any figures that you get prior to that date will not be a fair comparison with the figures here.

By Mr. Fulbright:

Q. Well, was the increase in the wages of engine and trainmen higher, proportionately, than the increase in the wages of men engaged in locomotive repair work?

A. The basis that is used here fluc-uates with the volume of business. Your unit is derived from 1,000 gross ton miles. If your gross ton miles fluctuates to any great extent, it has an effect on the unit which you derive from that source.

Q. The item of locomotive repairs would include the expense of labor engaged in making the repairs?

A. The repairs will include wages and material.

Q. Yes. Now, General Order No. 2—is that what you call it?

A. No. Decision No. 2.

Q. Decision No. 2.

Mr. Ross: By the Wage Board?

The Witness: By the Wage Board, yes, sir.

By Mr. Fulbright:

Q. Decision No. 2 by the Wage Board makes increases in the wages of the men making repairs and also in the wages of the men engaged in operating trains?

A. Yes, sir.

Q. So that the increase would be reflected in both cases?

A. Yes, but it will not be fair to make a comparison with a period prior to this, because this is a considerable increase over the first months of the year.

Q. Now, on page 8 of the same exhibit, at the bottom, is shown statement showing the actual test of time of switch engine setting. Did that mean from the time the switch engine back-hauled all the cars until they were actually set at the press?

A. I think if you will look at page 10, you will find that I have read that off already.

Q. Oh yes. These were specific tests made for the purposes of this case, were they not?

[fol. 54-12] A. Yes, sir.

Q. They did not take into consideration the time that had elapsed between the date the car arrived in the yard until the switch engine took hold of it?

A. No. No transportation delays were taken into this at all.

Q. Now, those cars may have been in a convenient place in the yard or at some point in the yard where it would take less time than for them to load at some other points?

A. The whole distance here is only 935 feet—just a few turns of the engine and she is there.

Q. What is the size of the yards there?

A. Oh, they are fine yards, very good yards, but the compress is right there, almost at the round house, around there in the yard.

Q. There might be movements that would be three or four times that distance, though?

A. Up there?

Q. Yes.

A. No, not from where they break up the train, no. They break up the trains right close to the depot and the compress. Gainesville is a very compact yard and all the facilities are in a very small radius there, all together.

Q. Well, but you know not all the cotton is placed at the compress at the time the train is broken up. When the train is broken up, those cars are put in the yards, except such cars as may then be placed at the compress, and at another time they are taken out of the yards and placed at the compress as they may be needed there, by the switch engine. Is not that correct?

A. Well, I am going to tell you something. You are making a statement for me, but I want to tell you——

Q. Well, I want you to correct that statement. I do not want to make an erroneous statement or put words into your mouth, which you do not intend to say.

A. Well, if that is the case, possibly I did not understand you, will you please repeat it?

[fol. 54-13] Q. I am asking you whether or not cotton coming into the compress point is all placed immediately at the press, or whether or not part of that cotton is put in the yard and later put at the press, when there is room at the press for the placing of it.

A. No, the aim is to compress it at once, yes, sir, compress it at once. That is the aim.

Q. But you have not answered my question, Mr. Morrissey. If you do not know, that settples it, but I am asking you——

A. Well, you are putting a hypothetical question to me that I could only answer by giving an opinion.

Q. Well, if you do not know how that actual operations take place——

A. Oh, I have seen those yards and have been there waiting for them to break up trains so I could weigh the cars. When I was traveling on the road, that was part of my position, to intercept trains and test-weigh cars. I know all about how they handle them.

Q. Now, during last fall, when the cotton was moving heavily, was the cotton moved direct from the trains as they came in to the compress, or was that cotton put in the yards until there was room at the compress platform to place it and unload it?

A. Well, I have no figures on that.

Mr. Fulbright: Well, that is what I want to know. That is all.

By Mr. Hershey:

Q. From your Exhibit No. 110, you conclude that the cost as indicated in the exhibit on uncompressed cotton is 82.39 per cent greater than on the so-called carrier's privilege of compression cotton, or cotton compressed at Gainesville, in the actual out of pocket cost?

A. Yes, that is the final summary on the front sheet.

Q. Now, that does not include any question of rates, whatever, does it, freight rates, where the public is concerned?

A. No, sir.

Q. Your conclusion there would be, would it not, that with the actual cost of handling uncompressed cotton 82.39 per cent greater than on the compressed cotton, it might not be inappropriate for us to even ask for a rate on uncompressed cotton 82.39 per cent higher than we get on compressed cotton?

[fol. 54-14] A. Of course, it costs you more to do the business, naturally, and you would like to have a higher rate on the service.

Q. These elements of cost include the dollars that we pay out for the actual handling of the traffic?

A. It does. A transportation man would feel mighty bad if he is operating at a loss.

Mr. Hershey: That is all.

By Mr. Ross:

Q. It would be the purpose of the railroad company to deliver its cotton at the compress soon as possible, would it not, for reasons of——

A. Cotton is carried especially on the train board and there are standing orders from the general manager that any delay to cotton will be handled severely when traced home to the parties at fault. Cotton must get preferred movement.

Mr. Ross: That is all.

Exam. Mullen: You are excused, Mr. Morrissey.

(Witness excused.)

[fol. 54-15] I. C. C. Docket 11965

WITNESS MORRISSEY'S EXHIBIT No. 110

Summary

Comparison of the average freight train cost, and other incidental expenses in connection with the haul of 540 bales flat all the way from a point in Oklahoma, 100 miles north of Gainesville through to Galveston and the cost of the 540 bales if compressed enroute at Gainesville.

For comparative purposes a shipment of 540 bales was selected. The same transportation unit of cost was applied to both shipments.

Exhibit 1. This covers the cost of movement, terminal expenses, etc., and per diem of the flat cotton from origin in Oklahoma to Galveston, Texas.

The ascertained cost amounts to $558.16

Exhibit 2. This covers the cost of movement of flat cotton into Gainesville from 100 miles north in Oklahoma, and of compressed cotton from Gainesville to Galveston, also switching and per diem expenses, etc.

The ascertained cost amounts to $306.03

Difference $252.13

Increase in expenses flat compared with compressed, 82.39%.

[fol. 54-16] EXHIBIT 1

Flat Cotton

Operating Cost of Handling a Shipment of 540 bales of Cotton Flat to Galveston from Oklahoma, 100 miles North of Gainesville

	Gross ton miles
Length of Haul—511 miles.	
20 Cars tare weight, 20 tons each, 400 tons x 511 miles	204,400
540 bales cotton, 531 lbs. each = 143.37 tons x 511 miles	73,262
Total ton mile haul	277,662
Average cost per 1,000 gross ton miles Exhibit A, $1.50.	
277,662 x $1.50 = cost of haul to Galveston	$416.49
If compressed at Gainesville the cotton would move in approximately 8 cars, Gainesville to Galveston.	
Three days per diem on the surplus cars enroute to Galveston, 3 x 12 @ $1.00 equals	36.00
Estimated cost of switching the excess 12 cars to and from compress Galveston as worked out on Exhibit B	34.33
Approximately 75% of the cars into Galveston under load move out empty during the cotton season.	
Back haul on 9 cars empty to Somerville, 9 x 20 x 142 makes 25,560 ton miles, which at $1.50 per 1,000 gross ton miles, equals	38.34
Two days per diem on 12 cars while switching to and from yards and compress, and while unloading at Press	24.00
One day per diem on the movement back to Somerville	9.00
Total	$558.16

The average bales per car flat and compressed, and the average weight per bale, were compiled from the records of Galveston Freight Station, G. C. & S. F. Railway and represent what the cars actually carried into Galveston as per Exhibit D.

[fol. 54-17] EXHIBIT 2

Compressed Cotton

Operating Cost of Handling 540 bales of Cotton from a Point in Oklahoma, 100 miles North of Gainesville, Texas, Flat, to Gainesville for Compressing and from Gainesville to Galveston compressed. Total Distance, 511 miles

Movement from Oklahoma to Gainesville, 20 cars, 27 bales to car, weight per bale 531 lbs. Tare weight of 20 cars, 20 tons each, 400 tons x 100 miles, make ton miles into Gainesville	40,000
540 bales, 531 lbs. each, 100 miles, equals	14,337
Cotton when compressed will load in approximately 8 cars Gainesville to Galveston. 8 x 20 tons by 411 makes ton miles	65,760
540 bales, 531 lbs. each, x 411 miles makes ton miles	58,925
Total ton miles	179,022

Average cost per 1,000 gross ton miles, $1.50, Exhibit A. 179,022 x $1.50 = cost per 1,000 G. T. M.	$268.53
Switching at Gainesville to and from compress one hour at $9.50 per hour Exhibits B and C,	9.50
Per diem while unloading at press Gainesville	20.00
Per diem while loading at press Gainesville	8.00
Total	$306.03

The average bales per car flat and compressed, and the average weight per bale, were compiled from the records of Galveston Freight Station, G. C. & S. F. Railway and represent what the cars actually carried into Galveston as per Exhibit D.

[fol. 54-18] EXHIBIT A

Average Cost of Freight Train Service G. C. & S. F. Railway per 1,000 Gross ton miles Based on the Average Cost of Freight Train Operation September, October and November, 1920, Arrived at in Accordance with the Formula Prescribed by the Interstate Commerce Commission for Apportioning Expenses

Per 1,000 gross ton miles (in cents)	September	October	November	Average
Locomotive Repairs	.33	.37	.34	.35
Enginehouse Expenses	.08	.08	.08	.08
Fuel	.50	.59	.67	.58
Other Locomotive Supplies	.04	.05	.06	.05
Engine and Trainmen	.39	.41	.42	.41
Train Supplies & Expenses	.03	.04	.02	.03
Total Locomotive and Train Expense	1.37	1.54	1.59	1.50

Three months of cotton season used to obtain fair average.

Above expenses cover what are usually known as out of pocket expenses, and does not include Maintenance of Way and Structures, or any overhead transportation, Equipment, Traffif or General expenses, as defined by the Interstate Commerce Commission.

[fol. 54-19] EXHIBIT B

This deals with the Terminal Handling of 12 cars of Flat Cotton after arrival at Galveston.

If the cotton is delivered to the Galveston Wharf Company for movement to compress, the charge will be $4.50 per car, or	$54.00
If the cotton is delivered to the G. H. & H. or G. H. & S. A. for compress delivery, the charge will be $2.50 per car, or	30.00
If the Santa Fe makes delivery to the compress the expense will be two hours of the time of a switch engine for setting the cars and returning for the empties	19.00
Average of the various charges	34.33

There being no way of determining how these 12 cars would be handled, an average of the various charges was considered a fair representation of the extra cost at Galveston.

[fol. 54-20] EXHIBIT C

G. C. & S. F.

Average Cost of Switch Engine Service per Switch Engine Hour Based on the Average Cost of Switch Engine Service, September, October, and November, 1920

	September	October	November	Average
Engine repairs	$2.34	$2.28	$2.04	$2.22
Engine house expenses	.54	.48	.54	.52
Enginemen	1.50	1.50	1.50	1.50
Fuel	2.22	2.58	2.88	2.56
Other locomotive supplies	.18	.18	.24	.20
Switchmen	2.52	2.46	2.52	2 50
Total per hour	$9.30	$9.48	$9.72	$9.50

[fol. 54-21] EXHIBIT D

(Copy)

Galveston, Texas, January 25th, 1921.

A-202.

Mr. J. P. Cowley, Asst. to Vice-Pres., G. C. & S. F. Railway, Galveston, Texas.

DEAR SIR: Referring to your request for information concerning receipts of cotton, in which you ask for the following:

First. Average number of bales loaded in each car, divided as to compressed cotton and flat cotton.

Second. Average weight per bale.

We base our figures on cotton receipts for the months of October and November, 1920, and have to give you below result of our investigation.

Compressed Cotton

Number of cars—2,285.
Number of bales—153,330.
Average number of bales per car—67.
Number of bales from representative stations—30,000.
Actual weight—531 lbs. per bale.

Flat Cotton

Number of cars—565.
Number of bales—15,114.
Average number of bales per car—27.

Yours truly, (Signed) A. W. Dunham, Agent.

AWD/B.

[fol. 54-22] Factors Used in Preparing Exhibits by Mr. Dunlap

Check of 2,285 cars of cotton received at Galveston, the average number of compressed bales per car was	67
Check made of approximately 30,000 bales to determine the weight per bale, the average was in pounds	531
Check of 565 cars of flat cotton received at Galveston which showed an average number of bales per car	27
Information obtained from the Yardmaster at Galveston as to the average time of a switch engine setting cars to compresses and returning for empties	2 hours

By Mr. E. E. Taylor

Actual tests made at Gainesville of the time of switch engine setting	4 minutes
and pulling the cars at compress	8 minutes

Check of time of 148 cars unloaded at press Gainesville ..... average 1 day
Check of time of 105 cars loaded at press Gainesville ..... average 1 day

[fol. 54-23] (Copy)

Cleburne, Texas, Jan. 24th, 1921.

Mr. F. G. Pettibone, Vice-Pres. & Gen. Mgr., Galveston, Texas.

DEAR SIR: Your wire M-9 21st, M-6 22nd:

I am attaching hereto three statements:

One showing time consumed by switch engines in handling cars between the yard and compress.

One showing date inbound cotton placed and unloaded Gainesville Sept. 23rd to Nov. 15th, 1920, inclusive.

I did not have sufficient time to bring the statement showing date placed and unloaded up to date and return to Cleburne on No. 11 and get report to you on No. 17, as requested. If you would like the same information from Nov. 15th to date, I will be glad to prepare same for you.

Yours truly, (Signed) E. E. Taylor.

T GNG.

Following sent to:

January 26th, 1921.

E. E. Taylor, Cleburne:

Your letter 24th. Figures furnished appear to sufficiently indicate the time of unloading at compress Gainesville.

F. G. Pettibone.

[fol. 54-24] Statement Showing Time Consumed by Switch Engine in Handling Cars Between the Yard and Compress, Gainesville

	Time consumed
Test One:	
Engine left South lead to pull press at	11 36 A.
Returned to yard with twelve cars at	11 44 A. 8 minutes.

		Time consumed
Test Two:		
Engine left South lead with eight cars at	11 45 A.	
Spotted cars on compress at	11 49 A.	4 minutes.
Test Three:		
Engine left compress track with four cars at	11 50 A.	
Returned to yard at	11 54 A.	4 minutes.
Test Four:		
Engine left South lead with one car at	11 51 A.	
Spotted car on compress at	11 54 A.	3 minutes.

Cars handled in making test from yard to compress were coupled and stood first out.

No coupling to be made on cars standing on compress track which were used in making this test.

Distance from South lead of main yard to head block of compress switch about 935 feet.

This test made in person by Mr. E. E. Taylor, Superintendent.

[fol. 54-25] WITNESS MORRISSEY'S EXHIBIT No. 111 IN I. C. C. Docket No. 11965

This applies the ascertained increase less per diem and back haul in the cost of moving a shipment of 540 bales, to the movement of 32,124 bales, received at Galveston from Oklahoma, from August to December, 1920, inclusive, and also compare the car days on each shipment, flat and compressed.

Excess cost of moving 540 bales flat compared with the cost of moving 540 bales compressed at Gainesville	$252.13
Less back haul and per diem	79.34
Net excess cost	$172.79
From August to December, 1920, inclusive, the compressed cotton from Oklahoma to Galveston in bales amounted to	32,124
Applying the net excess cost of moving 540 bales flat to 32,124 flat would result in an increase in the train and switch cost, etc.	$10,279.08

Records of Galveston Freight Station show 32,124 compressed and 3,806 flat bales from Oklahoma to Galveston, August to December 1920, inclusive, total 35,930 bales.

Hauled Flat from Oklahoma to Galveston

35,930 bales at 27 bales per car equal	1,331 cars	
1,331 x 511 miles makes car miles loaded		680,141
680,141 at the average of 30 car miles per day equals car days	22,671	

Compressed at Gainesville

1,331 cars Oklahoma to Gainesville, 100 miles equals car miles		133,100
3,806 flat bales at 27 bales per car makes	140 cars	
140 cars Gainesville to Galveston, 411 car miles equals car miles		57,540
32,124 bales at 67 bales per car equals	480 cars	
480 cars Gainesville to Galveston, 411 miles equals car miles		197,280
Total car miles		387,920
387,920 at the average of 30 car miles per day equals car days	12,931	
Excess car days flat cotton	9,740	
9,740 car days at $1.00 per diem per day		$9,740.00
Total excess cost flat cotton		$20,019.08

Does not include maintenance of Way and Structures Expenses or any Overhead Transportation, Equipment, Traffic or General Expenses.

[fol. 54-26] I. C. C. Docket 11965

WITNESS MORRISSEY'S EXHIBIT 112

Net Ton-mile Basis

Freight Proportion of Operating Expenses of the G. C. & S. F. Railway per 1,000 net ton miles, September, October, and November, 1920, ascertained in accordance with the formula prescribed by the Interstate Commerce Commission for dividing common expenses between freight and passenger

Per 1,000 Net Ton-miles

Same data based on total operating expenses, all freight, years 1924 and 1925.

	September	October	November	Average
Maintenance of Way and Structures	$2.89	$2.86	$3.48	$3.08
Maintenance of Equipment	2.42	2.70	3.12	2.75
Traffic Expenses	.12	.14	.22	.16
Transportation	4.18	4.70	5.85	4.91
General Expenses	.26	.27	.36	.29
	$9.87	$10.67	$13.03	$11.19

[fol. 54-27] Gross Ton-mile Basis

Freight Proportion of Operating Expenses of the G. C. & S. F. Railway per 1,000 gross ton miles for the months of September, October, and November, 1920, ascertained according to the formula prescribed by the Interstate Commerce Commission for division of freight and passenger common expenses

Per 1,000 Gross-ton Miles

	September	October	November	Average
Maintenance of Way and Structures	$1.37	$1.32	$1.43	$1.37
Maintenance of Equipment	1.15	1.25	1.28	1.23
Traffic Expenses	.06	.07	.09	.07
Transportation	1.99	2.18	2.41	2.19
General Expenses	.12	.12	.15	.13
Total	$4.69	$4.94	$5.36	$4.99

[fol. 55] **Exhibit No. A-86**

Summary of Exhibit 110 Calculated on Basis of Exhibit 112, I. C. C. 11965

Comparison of the average cost of maintenance and operation in connection with the haul of 540 bales flat all the way from a point in Oklahoma, 100 Miles North of Gaines-

ville through to Galveston, and the cost of the 540 bales if compressed en route at Gainesville. For comparative purposes a shipment of 540 bales was selected. The same unit of cost was applied to both shipments.

Sheet 1. This covers the cost of maintenance and operation and per diem on the flat cotton from origin in Oklahoma to Galveston, Texas.

The ascertained cost amounts to	$1,454.53

Sheet 2. This covers the cost of maintenance and operation on flat cotton into Gainesville from 100 miles north in Oklahoma, and on compressed cotton from Gainesville to Galveston, and per diem expenses.

The ascertained cost amounts to	921.32
Difference	$533.21

Average excess cost of flat cotton per bale based on Exhibit 112 filed in I. C. C. 11965, Record 775	$0.99

Does not include interest on the investment involved, or a pro rata of taxes.

[fol. 56] Sheet 1

Flat Cotton

Maintenance and operating cost of a shipment of 540 bales of cotton flat to Galveston from Oklahoma, 100 miles north of Gainesville, calculated on basis of Exhibit 112, I. C. C. 11965

Length of Haul—511 Miles.

	Gross ton-miles
20 Cars tare weight, 20 tons each, 400 tons x 511 miles =	204,400
540 bales cotton, 531 lbs. each = 143.37 tons x 511 miles =	73,262
Total ton mile haul	277,662

Average cost per 1,000 gross ton miles Exhibit 112 =	$4.99
277,662 x $4.99 = cost to Galveston	1,385.53
If compressed at Gainesville the cotton could move in approximately 8 cars, Gainesville to Galveston. Three days per diem on the surplus cars en route to Galveston, 3 x 12 @ $1.00 equals	36.00
Two days per diem on 12 cars while switching to and from yards and compress, and while unloading at press	24.00
One day per diem on the movement back to Somerville	9.00
Total	$1,454.53

[fol. 56½] Sheet 2

Compressed Cotton

Maintenance and operating cost of 540 bales of cotton from a point in Oklahoma, 100 miles north of Gainesville, Texas, flat to Gainesville for compressing and from Gainesville to Galveston compressed, total distance 511 miles, calculated on basis of Exhibit 112, I. C. C. 11965

Movement from Oklahoma to Gainesville, 20 cars, 27 bales to car, weight per bale 531 lbs. Tare weight of 20 cars, 20 tons each, 400 tons x 100 miles, make ton miles into Gainesville	40,000
540 bales, 531 lbs. each, 100 miles equals	14,337
Cotton when compressed will load in approximately 8 cars Gainesville to Galveston. 8 x 20 tons by 411 makes ton miles	65,760
540 bales, 531 lbs. each x 411 miles makes ton miles	58,925
Total ton miles	179,022

Average cost per 1,000 gross ton miles, $4.99, Exhibit 112, 179,022 x $4.99 = cost per 1,000 G. T. M.	$893.32
Per diem while unloading at press Gainesville	20.00
Per diem while loading at press Gainesville	8.00
Total	$921.32

[fols. 57-57-19] **Exhibit No. A-87, Witness J. J. Morrissey**

Copy of testimony of J. J. Morrissey in hearing No. 2234, Before Railroad Commission of Texas, on Sept. 8, 1923, at Austin, Texas, relating to cost of handling flat vs. compressed-in-transit cotton, pages 20 to 68, volume 1, 890 to 926, volume 2.

[fol. 57-20] The Chairman: All right. The Carriers will proceed.

Mr. Ross: Call Mr. J. J. Morrissey.

The Chairman: Now, let me add one more thing, Gentlemen. The Commission does not like to interrupt the examination of a witness or the testimony of a witness, but at the very outset I think it fair to suggest that we will [fol. 57-21] do so this time. If witnesses or counsel do not go afield in their testimony or in their interrogation I think we ought to be able possibly to get through with this case in two days. However, there is no time limit on it, but if we proceed orderly we can do it; otherwise it will take longer, and that is a matter you gentlemen are as much concerned in as the Commission, and the time consumed in getting all the facts in this record that ought to be in here depends as much or more on you gentlemen as on the Commission, because we naturally hate to interrupt or interfere unless it is clearly out of order and adds nothing to the record. All right. Proceed, Mr. Ross. Now, just one thing further; In calling your witnesses, and people who interrupt to object or ask questions, please state your name to the Stenographers. Of course, some of you are known to the Stenographers, but others are not, and it will help us along considerably and save time if each time those of you who arise to object or interrupt will state your names so the Stenographers can get it, and we will have a fair record.

Mr. Ross: In that connection, Your Honor, I would appreciate it if the Commission would have counsel for those who appear in opposition to the application to defer all cross examination until the direct is in. If it is a matter of information, it is all right; but it breaks the sequence of the testimony to be interrupting, and I shall make that request.

The Chairman: Well, the Commission will request that [fol. 57-22] the cross examination of witnesses be deferred until the direct examination is over. Of course, at some point if there is something that needs immediate explanation, that is different; but defer your cross examination until the witness has completed the direct examination. Go ahead, Mr. Ross.

THE CARRIERS' TESTIMONY

J. J. MORRISSEY, a witness for the Carriers, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Ross:

Q. Mr. Morrissey, you have been sworn?

A. Yes, sir.

Q. What is your present position and what has been your experience the last ten or fifteen years?

A. My present position is Statistician to the General Manager of the Gulf, Golorado & Santa Fe Railway.

Q. You are located where?

A. At Galveston, Texas.

Q. How long have you held that position?

A. About six years.

Q. What was your experience prior to that time?

A. Well, I spent a number of years in the accounting Department, and I was five years Traveling Auditor; I was then for a couple of years actively engaged in the Trans- [fol. 57-23] portation Department, and then I put in several years analyzing operating expenses.

Q. All told, Mr. Morrissey, how many years have you been in railroad service?

A. Well, over thirty years, but I broke my service; if I had continuous service I would have had over thirty years service.

Q. Mr. Morrissey, I believe you have prepared some exhibits reflecting the cost of handling a shipment of flat or uncompressed cotton as against a shipment of compressed cotton?

A. Yes, Sir.

Q. I wish you would proceed with the explanation of the data that you have prepared——

Mr. Ross: Mr. Chairman, we have an exhibit to offer here, prepared by this witness, which will be No. 1, I suppose.

The Chairman: All right. Now, how many have you? do you desire to submit them one at a time?

Mr. Ross: Yes.

The Chairman: We want to be careful to keep these exhibits throughout the hearing properly numbered and identified.

Mr. Ross: This will be Exhibit 1, Mr. Chairman, consisting of eight pages.

The Chairman: All right. We will receive that and mark it Morrissey's Exhibit 1, consisting of eight pages. [fol. 57-24] Mr. Ross: How many does the Commission desire—three?

The Chairman: Well, we would like to have three.

Q. Mr. Morrissey, I wish you would just proceed now in your own way and explain what this exhibit shows.

The Chairman: Just a minute. Mr. Ross, I think it would be advisable to state briefly at the introduction of the exhibit its general purpose.

Mr. Ross: I so stated, Your Honor, that the exhibit reflected the difference in the cost of handling a shipment of flat cotton as against a shipment of compressed cotton.

The Chairman: All right. I overlooked that. Go ahead, Mr. Morrissey.

A. The first step taken in this case was to have the agent at Galveston make a check to ascertain the actual out-turn of the cars of compressed and flat cotton, so as to get fair averages. A check was made of 802 cars of compressed cotton, covering 55,062 bales, showing the average bales per car compressed to be 68.7. A check of 106 cars of flat cotton, containing 3,154 bales, made an average per car of

29.8 bales. The average weight per bale was found to be 522 pounds. Using those figures as a basis a comparison was made of handling 2,000 bales of cotton from Cleburne to Galveston, a distance of 318 miles, which is about as close [fol. 57-25] as we could get to the point of average haul where there was a compress situated. The number of cars required to carry 2,000 bales flat was 67; the number of cars required to carry 2,000 bales compressed was 29.

The Chairman: Give the number of the page you are reading from.

A. I am on page 1, sir.

The Chairman: All right.

A. The first expense was assembling those 67 cars of flat cotton to Cleburne, and it was estimated that cost at least one dollar per car, $67.00; 29 cars for the compressed cotton, figured at the same rate, $29.00, a difference of #38.00. A per diem, which is the rental of those 67 cars while assembling and loading, for four days, was $268.00, and per diem on 29 cars while assembling and loading, three days, $87.00, making a difference of $181.00. We now come to where the difference in ton miles of flat cotton versus compressed cotton has been computed. The difference amounts to 426,120 gross ton miles. The average cost of maintenance and operation, Gulf, Colorado & Sante Fe Railway, January to June, inclusive, 1923, less cost of repairs to freight cars and depreciation, etc., $3.20. Applying that average cost to the excess ton miles makes a result of $1,363.58. We have 38 surplus cars moving this flat cotton to Galveston, as compared with the compressed, per diem en route on these surplus cars, $114.00. Making final delivery [fol. 57-26] at Galveston of surplus cars, $90.00. That $90.00 is made up of an average of switching charges paid at the various compresses where that cotton might go, but does not include service rendered by the Sante Fe engine in bringing the cotton to the point of connection. Per diem while unloading and movement to and from compress on those 38 cars is $114.00. Now, that figure—we have demonstrated from various districts that about 75 per cent of the cars that go into Galveston in the cotton season go out empty and 25 per cent get a load, so we only charge a per diem or back haul on 75 per cent of those cars, which is 29

cars, making $87.00. Now, those figures which I have enumerated represent the excess cost of handling flat cotton versus compressed cotton. We now come to what we are entitled to under the Transportation Act. Interest at six per cent on the valuation of the property, details of which are attached——

The Chairman: Based on what valuation—valuation of what?

A. The Government valuation—tentative valuation of the Gulf, Colorado & Santa Fe Railway brought down to a unit in this case. That amounts to $989.64. Then the surplus cars' proportion of the taxes amounts to $156.17, or a total of $3,113.39, or 30 cents per hundred pounds. Now, we have intangible items on which it would be almost impossible to place a figure other than an estimate. For instance——

Q. You mean there are certain costs which should be properly allocated to this cotton traffic, to which you have [fol. 57-27] not given a monetary value in these statements?

A. Other than an estimate, and not included in those figures there is increased tracks which would be required on account of the increase in the number of cars hauling this cotton. That would include increased tracks at terminals and also passing tracks so as to afford easy passage for the trains. Increased equipment required, increased switching due to congestion, digging out cars in yards, increased station forces that would be required, additional accounting called for by this increase in cars, increased yard forces to handle the increase of cars. The company would be required to put up additional facilities throughout the State to handle this compressed cotton. A conservative estimate of all of those items, I would say from my judgment, will run from 12 to 15 cents a hundred pounds.

Q. Mr. Morrissey, you said a moment ago "this compressed cotton." You meant uncompressed cotton?

A. Uncompressed cotton. Now, on page 7 is an example of the difference between the revenue on a car of compressed cotton and a car of flat cotton. 68.7 bales, 522 pounds per bale, makes a carload of 35,861 pounds, which at 62 cents per hundred pounds will bring in a revenue of $222.34. A car of flat cotton 29.8 bales, at 522 pounds per bale, makes the weight of the carload 15,556 pounds, at 80 cents per hundred pounds, which includes 18 cents for compression, yields

$124.45, a difference in revenue between a car of flat cotton and a car of compressed cotton of $97.89.

[fol. 57-28] Q. That is the loss in earning capacity per car——

A. Per car.

Q. —where you handle flat cotton as against the way you handle compressed cotton?

A. Yes. On sheet 8 is shown the total tons of cotton handled by the G. C. & S. F. in the State of Texas, 235,827 tons. This makes 903,552 bales. If loaded compressed at 68.7 bales per car, the cars required would be 13,152. The actual number of cars handled according to the two reports is 20,552. If loaded flat, 29.8 bales per car, the cars required would be 30,320. Therefore the cotton actually moved in 20,552 cars, and if all handled on a compressed basis the number of cars required would be 13,152, which would be a saving of 7,400 cars. If it all moved flat, 29.8 bales per car, the number of cars would be 30,320, an increase over compressed of 17,168 cars, and those surplus cars would cover 130 miles of track.

Q. Do you think the G. C. & S. F. would have to have that much additional trackage?

A. No, that is merely an illustration of the difference in the cars. I would not say that they would require that number of miles of additional track.

Q. Now, going back to sheet 1 of your exhibit, if you know, or if you have made any figures, what would be the cost of handling the same shipment of compressed in transit cotton?

[fol. 57-29] A. Putting that 2,000 bales through the compress on a basis of in transit would cost exactly three cents per hundred pounds.

Mr. Fulbright: Would you read the answer: I didn't understand that.

Thereupon the Reporter read the last preceding answer of the witness.

Q. What do you mean by that, Mr. Morrissey?

A. Well, that is the expense attending the handling of the cotton through the compress, switching and other items, delays to cars and one thing and another. Perhaps I had

better read a memorandum I have made on that, and then it will be clearer.

Q. If you please.

A. Estimated cost breaking up and setting 67 cars to the compress to unload, $67.00; setting 29 cars to the compress to load them up, compressed, $29.00; pulling 29 cars from the compress, $29.00; per diem on 67 cars, $201.00; per diem on 29 cars, $29.00—an average of three cents per hundred pounds.

Q. Is there any other item of expense included in that which you have not taken into consideration, or do you figure that is the actual out-of-pocket expense, or is that the total expense?

A. Well, that is about what would occur in the ordinary handling of the shipment. The switching of those cars and the per diem of the cars and other incidental expenses are [fol. 57-30] the principal things that would enter into it. The accounting matter would be very small, so small that it would hardly be worth while to figure on.

Q. But you have not taken that into consideration in that figure?

A. No.

Q. Might there not be some other items of expense that would be properly chargeable to that?

A. Well, yes, there would be car inspection. The more cars you have the more car inspectors you have to have; cars have to be inspected.

Q. You didn't take that into consideration?

A. I did not.

Q. Any other items of expense you now recall that you did not give consideration in making that figure?

A. No, I can't recall any other just now.

Q. All right. Proceed.

A. Well, that is as far as my comparison goes. This is about all I have to say on the difference between flat and compressed cotton.

Q. Have you prepared any figures with respect to the cost of handling flat cotton on any other Carriers in Texas?

A. I have.

Q. What are those Carriers?

A. The M. K. T. of T. and the I.-G. N.

Q. What does your study show as to those lines?

A. Well, the cost is considerable higher on those lines than on the Santa Fe.

[fol. 57-31] Q. Take up first the I. G. N. and take about the same—I believe you use the same distance that you use in Exhibit No. 1, for the G. C. & S. F. What does your study there show?

Mr. Ross: This is offered as Exhibit No. 2, Your Honor.

The Chairman: Mr. Ross?

Mr. Ross: Yes sir.

The Chairman: Any of these exhibits, we would like to have one apiece for the Commission and one for Mr. Hudnall.

Mr. Ross: I've just got three, Your Honor. We are a little short on these copies. We can have some others made.

The Chairman: All right. Go ahead, if you haven't got them.

Mr. Ross: Mr. Archer, lend the Chairman your copy for a moment.

The Chairman: This will be received as Morrissey's Exhibit No. 2, consisting of two sheets.

Mr. Ross: Yes Sir.

A. Now, the only difference between this and the Exhibit No. 1 is a difference in the cost of maintenance and operation per thousand gross ton miles. The I. C. N. figures show an average of $6.54.

Q. Just go ahead and explain in detail.

A. It would make an average cost per hundred pounds of 30 cents, without including interest on the investment and [fol. 57-32] taxes, and including interest on the investment and taxes it would make 41 cents.

Q. Now, if you had given consideration to the items which you enumerated in connection with Exhibit No. 1, increased traf-c facilities, terminals, increased equipment, requiring more locomotives and so on,—giving all those items a monetary value, what would the cost in connection with the I. G. N.—the excess cost—appear to be?

A. From 53 to 55 cents.

Q. And in connection——

A. 56.

Q. And the same figure in connection with the G. C. & S. F., sheet 1 of your Exhibit 1, shows an average cost per

hundred pounds of 30 cents. Now, that did not include items of expense which are set out on the sheet contained in Exhibit 1 opposite page 1?

A. No.

Q. Now, what would the average cost per hundred pounds be on the G. C. & S. F. if you gave a proper monetary value to those extra items of cost or expense?

A. 42 to 45 cents.

Q. Now, I believe you have made some figures, too, in connection with the M. K. & T. of Texas?

A. Yes.

Mr. Ross: Here is the statement of the Katy, Your Honor. What is the number of the next Exhibit, Your Honor?

[fol. 57-33] The Chairman: It will be No. 3.

Mr. Ross: Morrissry's Exhibit No. 3. That will be a statement of the comparison of handling flat as against compressed for the M. K. & T.

The Chaiman: All right. Go ahead.

A. Average ton mile cost on the M. K. & T. of Texas, which was given to me personally by the Auditor of the M. K. & T., $6.25 per thousand gross ton miles.

The Chairman: We haven't a copy of that exhibit. If we are to follow them intelligently we must have copies of them.

Mr. Ross: Your honor, here is the Katy—statement of the M. K. & T. Now, if you gentlemen can get along on one less——

A Voice: Here is one, Mr. Ross.

Mr. Ross: Now, have you the I. G. N.?

The Chairman: Yes, I have the I. G. N.

Q. Proceed, Mr. Morrissey.

A. Applying the average cost per thousand gross ton miles on the Missouri, Kansas & Texas of Texas to the excess gross ton miles as shown in Exhibit 1 brings out an average cost per hundred pounds of 29 cents, not including the interest and taxes; adding the interest and taxes makes a total of 40 cents.

Mr. McKnight: If you add the intangible cost it would be what?

A. From 12 to 15 cents more.

[fol. 57-34] Mr. McKnight: 52 to 55 cents?

A. 52 to 55.

Q. All right, Mr. Morrissey. Are there any other exhibits?

A. No.

Q. Is there any other statement you wish to make in connection with your exhibits, Mr. Morrissey?

A. No, I can't recall anything; I think that's all.

Mr. Ross: Take the witness.

Cross-examination.

Questions by Mr. Fulbright:

Q. Mr. Morrissey, I want to just get at one or two points on these exhibits that I don't quite understand—your Exhibit No. 1. Down near the bottom of the page you have an item of 969.64 as interest on the Government valuation. Has the tentative valuation yet been made of the Gulf, Colorado & Santa Fe?

A. Yes, the Gulf, Colorado & Santa Fe was furnished with a tentative valuation, which they claim is too lo they don't think it is high enough.

Q. Is the figure shown on page 5 the figure that was furnished by the Government engineers?

A. The figure shown on page 5 is, with the exception that the value of the freight equipment has been deducted.

Q. Your statement shows the value of road and equipment in Texas?

A. The value of the freight equipment has been deducted from that.

[fol. 57-35] Q. What is the total value, including freight equipment, that was fixed by the Commission?

A. As nearly as I can recollect, the value of the freight equipment was about seven hundred odd thousand dollars.

Q. Seven hundred odd thousand dollars?

A. That is it if my memory serves me right, yes, sir.

Q. Then if we give the value of all of your properties it would be about seventy-seven million dollars, wouldn't it?

A. Yes, about seventy-seven—that is, in Texas.

Q. Yes. Why did you deduct the value of the equipment?

A. Because I was working on a per diem basis, and per

diem is rental of the car, and it also covers the cost of repairs to the car, depreciation set up, insurance on the car, and the interest on the investment.

Q. The cost of maintenance and your per diem expenses all go into your general operating costs, don't they?

A. Per diem is not an operating cost.

Q. Well, it goes into your general expense of handling your traffic, what you have to pay out to other lines?

A. Yes, it is an income item.

Q. Now, if you added the cost of your equipment there and figured your six per cent profit on that in addition to six per cent profit on everything else you own, why, it would not be necessary to include that several hundred dollars of per diem charges, would it?

A. No, but I made a test of that, and as near as I could come to it there is a very little difference between per diem [fol. 57-36] and the repairs, depreciation and retirements and the interest at six per cent on the value of the cars; there is very little difference, and the reason that I used the per diem is by reason of the fact that the Gulf, Colorado & Santa Fe Railroad does not own full equipment, it works in a pool arrangement, and I thought it would be fair to all parties to use a plain basis that there could be no misunderstanding about.

Q. At any rate, you have the per diem in there and you have eliminated interest only on the equipment?

A. Interest on the freight equipment.

Q. Interest on the freight equipment?

A. Yes.

Q. Now, did that include—did you eliminate the power, too?

A. Oh, no—no, that is a different proposition.

Q. So that the locomotives—investment in locomotives and such as that is included in the seventy-six million dollars?

A. Freight locomotives, yes sir.

Q. And those locomotives are utilized in transporting those cars?

A. Yes, but the Santa Fe owns its locomotives; they have a right to be in there.

Q. Now, this statement simply takes cotton that has originated at the compress point in compressed condition

and contracts that with cotton that originates there in uncompressed condition and is shipped through in that condition?

[fol. 57-37] A. So far as that front sheet goes, you are right; but there is a three cent difference when you compress it in transit.

Q. Yes, but in addition to that your compressed cotton has originated for the most part at some other point, hasn't it?

A. Well, Cleburne is a point where the road converges; there is the Weatherford branch and there is the Fort Worth branch and the Dallas branch; it is liable to come in from any of these branches.

Q. You have not computed the cost of assembling the cotton at the compress point in this comparison, have you?

A. The cost of assembling the cotton up to the compress point is common to both. It will cost just as much flat to the compress as to bring it into Cleburne flat.

Q. Yes. Then if it is brought into Cleburne flat——

A. The difference commences at Cleburne.

Q. You would begin there with another shipment from Cleburne?

A. Yes sir.

Q. And you would add all this detention and so forth to that?

A. Yes sir.

Q. In I. C. C. Docket 11,965 you made some comparisons which went further than this and took the cost of bringing flat cotton from point of origin to the compress point, plus the compressed cotton out of that point?

A. Yes, that was ——

Q. And contrasted that with the cost of shipping flat cotton from the point of origin through to point of destination?

[fol. 57-38] A. That was 100 miles from Oklahoma into Gainesville.

Q. Yes. Now, would there be anything substantially different from that result if you made the same kind of comparison in the State of Texas?

A. No, the expenses of moving this two thousand bales of cotton into Cleburne, whether you compress it or not, is all the same.

The Chairman: I didn't catch that answer.

A. The expense of moving cotton into Cleburne flat is the same; there can't be any difference. The difference commences when you go to the compress.

The Chairman: Yes, but the cotton which you ship through uncompressed does not move into this local point, it moves directly from point of origin to destination, doesn't it?

A. Well, it comes to Cleburne in local trains, because there are short hauls in there; it comes in there in local trains and it has to be broken up and assembled and put in through trains.

Q. But you would not have your three days detention which you have as the average detention in going to the compress?

A. Oh, yes, you are bound to have detention, yes, sir.

Q. On a through movement of flat cotton you are bound to have detention?

A. You have to break the train up. It comes in there on locals and it is on different tracks and it has to be broken up and put together.

Q. But you have charged the cotton with three days de-
[fol. 57-39] tention in getting into the compress?

A. Yes.

Q. You would eliminate that, because you would not go to the compress?

A. We have an offsetting charge against that three cents per hundred pounds of breaking up of the flat cotton.

Q. Well, you have charged that in here, too—you have the breaking up charged in here. Now, when you get that in a through train at Cleburne how long does it take you to carry that cotton to Galveston?

A. Well, that would depend upon circumstances a great deal.

Q. What would you say would be an average movement under normal conditions?

A. They ought to make it in three days.

Q. Three days time?

A. Yes sir.

Q. That is, after it is already put into through trains it would still take three days to go from Cleburne to Galveston?

A. Yes, I would say fairly good service would be three days.

Q. Now, you have not undertaken in this statement to show the total cost of handling the two kinds of cotton as you did in the case that I referred to, have you?

Mr. Ross: Now, Mr. Fulbright, I have that record here.

A. Pardon me. You have that.

Mr. Ross: Pardon me just a moment.

[fol. 57-40] Mr. Fulbright: Let him answer the question.

Mr. Ross: Just a moment. I have the record in 11,965 here, the case which you refer to and if you want to offer that in this record I have no objection. Mr. Morrissey's statement there shows it was not the entire cost, but was the out-of-pocket expense only.

Q. Well, we will show the out-of-pocket cost—the cost that you could locate, Mr. Morrissey.

A. I have the exhibit here that we offered in that case.

Q. But you have not undertaken to locate all of the out-of-pocket cost here, but simply the difference

A. Here now?

Q. In this exhibit.

A. Well, that is locating it all when you are locating the difference.

Q. Well, now let's take your item of $3.20 per 1,000 gross ton miles. Will you give us the analysis of that—what makes it up?

A. I will. Maintenance of way and structures, 92 cents; maintenance of equipment, $1.24; traffic, .07; transportation, $1.45; general expense, 14 cents. That makes $3.82, from which is deducted cost of freight car repairs, depreciation and retirement, 62 cents, making a minimum charge of $3.20.

Q. Then that does include all of the out-of-pocket cost, less the items you have enumerated?

A. No, it includes all costs, overhead costs and all.

[fol. 57-41] Q. Now, have you the analysis of the costs of the same items in the same way on the other lines that you testified about?

A. No.

Q. You haven't that?

A. I haven't that. I have the totals. That could be very easily obtained, but I went to Dallas to get the Katy figures.

Q. You didn't compile those figures yourself?

A. I got them from the Auditor of the Katy and the President's office of the I. G. N.

Q. Now, it appears it cost those two lines just twice as much to handle freight as the Santa Fe and I am anxious to know what makes up that cost.

A. Well, I'll give you a few of the items.

Q. If you haven't the figures yourself I don't want you to testify, but if you have I want to know it.

A. Well, the only way to determine that is to lay the figures side by side and make an analysis of them, make an analysis of the constructive mileage of the different lines, of the over time, of the maintenance; otherwise you could not arrive at it.

Q. But you did not personally compile those figures for these other lines, did you?

A. No, sir, I obtained them from them.

Q. Do you know whether or not there is any one here that can give us the details of those figures?

Mr. Ross: If you insist on that, Mr. Fulbright, we will [fol. 57-42] have to delay the hearing about a week. We can get these men here. Of course, the Katy man will have to come from Dallas and the I. G. N. man from Houston, but if you insist upon it we will try to get them here.

Mr. Fulbright: I don't insist upon it at all, but I do object to the introduction of these exhibits, Mr. Chairman and Gentlemen of the Commission, which show a general operating cost double the amount shown by this railroad, with nobody here that has any personal knowledge of how they were comprised, and I wish now to move that these two exhibits 2 and 3 be stricken out.

Mr. Booth: Mr. Chairman, we can furnish a sworn statement showing the details.

Mr. Fulbright: I want the man here who can tell something about it, Mr. Booth, because it is so out of line, and I can't see why it will cost your line twice as much as it would any other line to do the same thing.

Mr. Ross: Your honor, we did not anticipate when we came here to try this case that we would have to bring everybody from the office boy to the General Manager to try this cotton case. Now, Mr. Morrissey at my request made a special trip to Dallas to get the figures from the

M. K. & T. He also made a special trip to Houston to get the figures from the I. G. N., at my request, and the average cost per thousand gross ton miles was given to him by the officials of those lines, and it seems to me that it is clearly admissible. This is not a court of law; we are not governed [fol. 57-43] by the strict rules of evidence. If the Carriers had to prove step by step every figure that they put in these cases, not only the cases before this Commission but before the Interstate Commerce Commission, it would take fifteen or twenty witnesses to make up one exhibit or to put in one exhibit. There are that many men who put in some calculations on these exhibits.

The Chairman: Mr. Ross, is your statement comparable to the question here involved? Mr. Morrissey, for instance, in his exhibit here he makes for the Santa Fe, doubtless he had to rely on other people to assemble those figures, but it is for his road and over which he had supervision. The objection here made is to pure hearsay figures which he obtains from these other roads, without anything to substantiate them or base them on.

Mr. Ross: He went to the general offices of those roads, Your Honor, and assisted as I recall—or just what was the nature of your work in connection with securing these statements?

A. Well, I assisted the Auditor of the M. K. & T. to make the figures; I was in a hurry, getting near train time, and I assisted him in making them. But the I. G. N. figures were received by mail.

Mr. Ross: Mr. McKnight here, Your Honor, has a statement which simply shows the total operating expenses and total gross ton miles.

Mr. McKnight: It is just a matter of division; that is [fol. 57-44] all there is of it.

The Chairman: I think the Commission is entitled to have these figures on some substantial basis, and it would be easier for the I. G. N. and Katy to prepare their figures and present them here than for Mr. Morrissey.

Mr. McKnight: Here are the Katy figures, if Your Honor please.

The Chairman: But we will just note this objection on the record and later determine, when we have time to con-

sider it, whether we will permit them to be introduced or strike them out.

Mr. McKnight: We have the M. K. & T. figures the same as Mr. Morrissey's figures.

The Chairman: The objection will be noted on the record and the Commission will later determine whether the exhibits will be stricken out.

Mr. Ross: As to the Katy, we have a statement here over the signature of the Auditor of that line to Mr. Huff, General Attorney of that line, and we offer it in connection with that.

Mr. Fulbright: We object to that for the same reason.

Mr. Ross: If the Commission rules them out we would like to get these men here.

The Chairman: We have not ruled at all, Mr. Ross. I am just telling you the objection will be noted and we will later make our ruling on it.

Mr. Ross: All right.

[fol. 57-45] Mr. Cowan: In regard to the gross ton mile theory as a basis to undertake to determine the rates, I have my long-recognized opposition to that, and we don't want to go on here as though it was accepted as the basis upon which to estimate what the rates ought to be. We want to file objections, after analysing these statements, to the whole of them, as far as that foes.

The Chairman: All right. What exhibit is this you are now offering?

Mr. Ross: It is offered, Your Honor, as Morrissey's Exhibit No. 4. It contains the same figures, I believe, Mr. Morrissey, that you obtained from the Auditor of the Katy?

A. Yes, sir, the same figures.

The Secretary: Have you more than one copy of that?

Mr. Ross: No, we have not.

The Chairman: That is Morrissey's Exhibit No. 4.

Mr. Fulbright: We wish to make the same objection to this, and further there is no witness here to identify it.

The Chairman: All right. We will rule on it later.

Mr. Ross: If your Honor rules on that I would like to put Mr. McKnight, Assistant General Solicitor of the Katy, on the stand; he received that, and I think the witness can identify that as being a letter from the Auditor of the M. K. & T.

Mr. Fulbright: Your Honor, we don't want to be captious [fol. 57-46] about these matters, but here is such a gross discrepancy in cost of operation where it appears that one line is either very inefficient in its operation or there is some other very different condition of operation; it is so material we can't let that pass unchallenged in this proceeding. Now, Mr. Morrissey appears to be conversant with how his figures have been compiled and is here to be interrogated on them; these other men or not.

Mr. Ross: I might state that the witness began to answer your question for you when you made your objection. Now Mr. Morrissey has made a study of his figures, and if you desire we will have Mr. Morrissey answer your question as to his views as to what causes the discrepency between the three lines.

Cross-examination resumed:

Q. Now, let's go back to the Santa Fe, Mr. Morrissey. Have you here the figures—your computations you made whereby you reached the analysis you have just described in connection with the cost per thousand ton miles set forth on page 4 of your exhibit?

A. Those are contained in our operating sheets, and it is a regular standard form of the company. I suppose we could get them on application, but there are so many of them——

Q. Now, your credits and debits on account of per diem are not included in those figures, are they? For the same period what was your debit and what was your credit on [fol. 57-47] per diem on the same line?

A. On the Santa Fe?

Q. Yes, sir.

A. Well, that is a very exhaustive subject, that hire of equipment. I haven't those figures. They are contained in the annual report to the Commission——

Q. Yes, sir.

A. —and I haven't got them here.

Mr. Ross: They are available to Mr. Fulbright, aren't they?

A. Oh, yes.

Q. Well, you would have no objection to our referring to them, of course?

A. No, sir.

Q. If you, however, obtain your six per cent on your total valuation, including your equipment, there would be no occasion to put any charges for per diem in here, would there?

A. Oh, yes; I excluded freight equipment purposely so I would not have any duplication of charges in per diem and freight equipment. Yes, sir, we are entitled to that six per cent.

Q. Then this statement in it merely shows your costs; it shows an arbitrary known as the one dollar per diem, whether you own the car or not?

A. Oh, no.

Q. And it shows six per cent profit on the investment outside of freight equipment, doesn't it?

A. Outside of freight equipment?

[fol. 57-48] Q. Yes.

A. Figured down to the unit of the car basis, yes, sir.

Q. Now, you made some statement here about a lot of intangible costs that you said run 12 or 15 cents per hundred pounds. I didn't exactly understand what you referred to.

A. An increase in the movement of flat cotton will necessarily call for an increase in your facilities of every description. It means additional switching, additional equipment, additional accounting, and I suppose other expenses that I can't recall just now.

Q. Now, the amount of those expenses would depend upon the amount of the increase in the flat cotton movement, wouldn't it?

A. Decidedly so; that is what I said.

Q. So if it continued in the future as in the past there would be no such change there, would there?

A. No, these contingent expenses are based entirely upon an increase in the movement of flat cotton.

Q. That is what I was getting at. Now, in assembling your cotton at the compress point at Cleburne, under your rules you would assemble your cotton at points intermediate between Cleburne and Temple and haul it up to Cleburne and bace south to Galveston?

A. Well, not necessarily. I think cotton originating south of Cleburne would naturally be compressed at Temple.

Q. That is a matter that the Traffic Department would have to answer, isn't it?

A. Yes, but I am taking from an economic point of view. [fol. 57-49] Q. As an economic proposition it would not be an economic proposition to haul it up to Cleburne and haul it back?

A. No, sir, it would be a useless service.

Q. And it would be an expensive service?

A. It would, yes, sir.

Q. The same thing would be true above Cleburne if you hauled it back to Dallas?

A. That is for any considerable distance, yes, it would be a losing proposition.

Q. And that would all enter into your total cost of operation and somebody would have to pay for it or you would lose money on it?

A. Yes, sir, if we performed the service it would enter into the cost of operation.

Q. Now, have you undertaken to reduce to a net ton mile basis your cost of operation for this period?

A. I have not.

Q. Have you undertaken——

A. That is, I haven't it with me; I have it in Galveston, yes.

Q. Have you undertaken to reduce to a gross ton mile or net ton mile basis the interest on the investment?

A. Well, if you work on a net ton mile basis you will cut out all the extra service attached to flat cotton. That would not be fair.

Q. It is your idea, then, that this extra service that is performed on cotton is something that itself should be charged for?

A. Why, hauling a ton of car costs as much as hauling a [fol. 57-50] ton of freight; you are hauling a dead car.

Q. The test as to the average loading is reflected in the letter of Mr. Dunham on page 2?

A. Mr. Dunham is here, and I would prefer for you to ask him.

Q. That's all right; I am not questioning that. That was simply an effort to get at an average performance, and not what would be the actual performance?

A. That was simply to find out the out-turn of the cars, what it was actually in fact—no test, no theory—just the actual out-turn.

Q. Do you know when the test was made? If you know, why, I will ask you and not have to bother Mr. Dunham about it.

A. Well, the test was made before I started working on these papers, because I made that test the basis of my work, but I think Mr. Dunham can tell you that.

Q. Well, we will get to that. Now, in the item of making final delivery at Galveston, $90.00 what is the analysis of that, Mr. Morrissey.

A. The Santa Fe does not go to—they have no tracks to all the compresses at Galveston, so that it is pretty hard to say—when a shipment of cotton comes in, unless you actually knew, it is hard to say which press it is going to. For that reason—now, for instance, from the center of Fifty-seventh Street to the Kempner press and return is 15,000 feet; that is direct delivery by the Santa Fe—we have got a track there. From the same point to the old Shippers' press and return is 20,986 feet; they have a track [fol. 57-51] there. From the same point to the Southern Products Company and return is 14,822 feet. Then from the same point to Crespi & Company and return is 15,262 feet. Then at Cleburne from the center of the yard to the center of the compress platform and return is 8,800 feet. Now, the Santa Fe makes direct delivery to those points that I have enumerated, but the Santa Fe does not go to about half a dozen compresses in Galveston; they don't go to one of the largest there, which is Moody & Company—they have no track into that compress; that would call for a switch on the part of the Santa Fe and also a switching charge; that is what makes the average at Galveston so much higher than where they perform the service themselves exclusively. Now, that figures out at Galveston $2.37 a car as against $1.00 per car at Cleburne. That $2.37 is made up principally of the switching charge to the Wharf Company of $4.05 a car and to the S. H. & S. A. of, I believe, $2.50 a car. And then in the third instance where

the Santa Fe reaches the compresses themselves for the use of their own engine. The average of those three makes the figure.

Q. Well, if it is local cotton moving under local bill of lading do you pay the Wharf Company $4.05 per car?

A. If we deliver to the wharf, yes.

Q. You would not deliver to them if it were local, would you?

A. No, not if it is consigned to some local concern, but if that place is under the Wharf Company's facilities we have to pay them.

[fol. 57-52] Mr. Fulbright: That's all.

The Chairman: Any further questions to Mr. Morrissey?

Mr. Ross: I have some rebuttal, Your Honor. I don't know if Mr. Cowan wishes to interrogate him.

Mr. Cowan: I wish to ask Mr. Morrissey a question or two in regard to the ton mile basis.

Questions by Mr. Cowan:

Q. That involves the same system of estimating gross ton miles that is used in cattle cases, does it not?

A. Well, Judge, we are measuring expenses now by the gross ton mile in this case; we are not calculating freight rates or anything—we are just measuring the expenses.

Q. Well, you find the total amount of expenses included in the gross ton miles, including interest and everything connected with it except the locomotives and tenders, and you divide your gross ton miles into the items of cost which you have used in the aggregate, and that gives you the cost per gross ton mile?

A. Yes, that is the way it is usually done.

Q. And you say it costs as much to haul a ton of car as a ton of freight?

A. Yes, sir.

Q. The theory is that whatever the weight is it is moved, it is charged up just the same, irrespective of whether it is freight or whether it is empties or whether it is the weight of the car and the load where it is loaded—the entire [fol. 57-53] weight?

A. Well, Judge, the car and the load are inseparable. You've got to make something out of your haul.

Q. In other words, your empties are charged just the same?

A. Yes, you have to get something out of it.

Q. And that applies to the relative part of the car which is used, regardless of whether the most economical car is used, so far as gross ton weight is concerned, or whether the heaviest car is used—the cars are used indiscriminately in this estimate?

A. I——

Q. You took the weight of the car, whatever sort of car was used?

A. Yes.

Q. To get the total gross ton weight you took the weight of the car?

A. And the weight of the load.

Q. That is irrespective of the character of the car?

A. Of the character of the car.

Q. You just took the cars which were actually used in the transportation?

A. Yes.

Mr. Cowan: That's all.

Questions by Mr. Hogsett:

Q. Mr. Morrissey, in moving freight through Houston, thence by rail lines to Galveston, is there any additional cost involved in moving the freight from Houston to Galveston?

[fol. 57-54] A. I don't see where that enters into this case, Mr. Hogsett.

The Chairman: What was the question, Mr. Hogsett?

Q. In moving freight into Houston, thence by rail lines to Galveston, is there an additional cost involved?

Mr. Ross: Your Honor, I think I shall have to object to that for the reason that it is improper cross examination, as the witness has made no study of the increased cost of handling cotton a distance of fifty miles between Houston and Galveston and he has not entered into that feature of the case, if that question is in this case, and I think it is improper cross examination.

Mr. Hogsett: If you please, Mr. Chairman, this witness has qualified himself as an expert.

Mr. Ross: It may be material later, but not now, I think.

The Chairman: Mr. Morrissey has not said whether he could answer the question or not.

A. I said I didn't think it entered into this case.

The Chairman: Well, the question is whether you can answer the question—whether you have the facts.

A. I have not the facts.

The Chairman: Well, for the present we will sustain the objection.

Questions by Mr. Fulbright:

Q. Just another question, Mr. Morrissey. How do you arrive at the computation of charging four days for assembling cars at Cleburne for loading cotton?

[fol. 57-55] A. Well, empties are not always on hand; they came in, peddled around, and have to be switched on different tracks and picked up and sent to the press.

Q. Well, doesn't every compress point make its own empties during the cotton season practically?

A. Well, this is where the cotton comes in, not as a starting point, they can't make their empties.

Q. If I offer you some freight at Cleburne, some cotton, during the cotton season, or any other compresspoint, wouldn't it as a normal proposition be a situation where you would be making empties every day at the compress?

A. This particular question that you ask me now has reference to a shipment originating at Cleburne flat and compressed?

Q. Yes.

A. No prior movement?

Q. That is correct.

A. Just picked up at Cleburne. Well, now, you don't always have 67 cars out and dried and ready—you've got to switch them out of trains.

Q. We are not contemplating that these were all offered at the same time. But isn't it a fact that the compress points make more empties than they require under normal conditions?

A. Yes, when the season is in full working order they make more.

Q. And your computation that you made here figured on bringing these cars in from some other point of origin?

A. Yes.

[fol. 57-56] Q. And not on cotton that originated at Cleburne in flat condition. Now, why did you make it four days in the case of one and three days in the case of the other?

A. On account of the difference in the number of cars.

Q. Why did you figure 29 empties to be backhauled on the flat cotton from Galveston?

A. That is 75 per cent of the 38 cars that went into service. I figured that nine of them got a load in Galveston, and that would relieve the flat cotton of that much expense, because they picked up a load at Galveston, and the 29 cars—we have made several figures and tests to see what per cent of our cars go out empty and what per cent get a load. As a general rule about 75 per cent is a pretty fair average of what leaves Galveston in the Cotton season empty, and it was on that account that I applied that rule to that shipment.

Q. Don't you pick up loads at Somerville or put some of these through Somerville for loading?

A. Well, if we were hastening these cars back to load them with cotton back to their original point I think that the original shipment ought to be charged with a loaded and an empty haul.

Q. In other words, it would depend on your car situation largely.

A. And it is very acute in the cotton season.

Mr. Fulbright: That's all.

Mr. Chairman: Mr. Morrissey, perhaps you have covered [fol. 57-57] this already. The question Mr. Fulbright just asked you nearly completed what is in my mind, but this is what I want to get clear: In your computation of flat cotton on your Exhibit 1, page 1, you have set up a hypothetical case where—charged up against the movement of flat cotton the cost of moving into Cleburne every car that would be necessary to load that cotton out?

A. I beg your pardon sir. I did not.

The Chairman: Well, that is what I am trying to get at.

A. I didn't charge anything into Cleburne at all.

The Chairman: Sir!

A. I didn't make any charge for any cars into Cleburne.

The Chairman: Well, you have the cost——

A. It is out of Cleburne.

Mr. Ross: Coming to the port, Your Honor.

Mr. Fulbright: I don't understand it at all Mr. Morrissey.

The Chairman: Just a moment. Assembling 67 cars at Cleburne, estimated at $67.00; that is a dollar a car. Now, what do you mean by that, if you don't mean to assemble them somewhere else?

A. Well, now, this assembling of cars, I made a little notation here of what that meant. Assembling means picking up the cars on various tracks and getting them together for loading and in loads.

The Chairman: You mean they are already in Cleburne?

[fol. 57-58] A. Yes, sir, they are already in Cleburne.

The Chairman: But scattered around over the yards.

A. They are already in Cleburne, but it is just assembling them and putting them together.

Mr. Fulbright: It would take on an average of four days to assemble all those cars right in the yards according to his computation.

The Chairman: I was just coming to that. In the next item you have per diem on these 67 cars while assembling and loading, four days.

A. Yes, sir; that is the rental of the cars.

The Chairman: I understand, that is the result, but I am talking about the time it takes from different points in Cleburne to assemble these cars and load them. Do you think that really is a fair estimate?

A. I do. Loading out flat cotton is not as expeditious as loading out compressed cotton.

The Chairman: Well, you don't have to wait until it is compressed there?

A. No, this is flat cotton.

The Chairman: I understand, but in your next item you have three days for assembling and loading compressed cotton?

A. For the compressed cotton, yes.

The Chairman: I confess, Mr. Morrissey—I am just trying to get at the correctness of your figures. I desire to understand what you are talking about, and I just don't [fol. 57-59] quite comprehend the charge you have made of four days, $268.00, for assembling and loading of cars of flat cotton.

A. Well, now, those cotton cars that we use for this flat cotton we will say come into Cleburne from three different points. The Cleburne yard is a pretty big yard; they are scattered all over that yard; they have got to be assembled, put in loading lots, they are not all loaded at one time, but those cars are there for that purpose and while there they are under per diem.

The Chairman: What does your Exhibit 1 show the extra cost of handling this flat cotton to be? you've got it here somewhere.

A. Yes, 30 cents per hundred pounds.

The Chairman: 30 cents per hundred more than compressed cotton?

A. Yes, sir.

Mr. Ross: That is including the intangible items to which he has given no monetary value.

The Chairman: Yes, I understand that.

Mr. Ross: Amounting to about 40 cents.

The Chairman: You arrive at that by figuring up here the four days for assembling and the other figures you have given and 318 miles?

A. And the hauling of the 2.3 surplus cars to Galveston.

The Chairman: All right.

[fol. 57-60] Questions by Mr. Fulbright:

Q. Now, the cost of assembling those cars is a part of your operating cost, isn't it?

A. Yes, sir.

Q. So that is duplicated when you figure your per diem cost of the thousand gross ton miles?

A. No, sir, it is an extra service.

The Chairman: Anything further of Mr. Morrissey? All right. Stand aside.

Mr. Ross: No, I have some rebuttal, Your Honor.

The Chairman: I thought you were through.

Redirect examination.

Questions by Mr. Ross:

Q. Mr. Morrissey, in reply to questions by Mr. Fulbright you stated it would be very expensive to back haul cotton to the compress at Cleburne. As I understand, where the distance is relatively short or other circumstances enter it is probably more economical sometimes to take that cotton back to the compress where it originates at some point a short distance out of Cleburne?

A. Well, I think I qualified that; I think you will find it in the record where I said when the distance is considerable.

Q. Take, for instance, when the Temple compress is congested?

A. But I would not consider it much of a back haul from Rio Vista to Cleburne; if your locals come along and pick [fol. 57-61] it up and take it through, I think it would be more economical to take it to Cleburne than to Temple.

Q. Well, take some point south of Cleburne, that car of cotton could go to Cleburne to the compress and we could release the equipment and there might be a saving there?

A. Yes, sir.

Q. Now, the exhibits which you have offered show that there is some difference in the maintenance and operation per thousand gross ton miles of the G. C. & S. F. versus the M. K. & T. and the I. & G. N. Now, you made the cost study, and I wish you would state what your views are as to the reason for this difference in the cost of operation of those lines?

Mr. Fulbright: We object to the question as calling for a conclusion of the witness. Unless the witness is familiar with the conditions we don't care to hear his opinion about it.

Mr. Ross: Your Honor, the witness has had some thirty years experience in the railroad service.

Mr. Fulbright: Not with the I. G. N.

Mr. Ross: He is now the Statistician for the G. C. & S. F., and he has studied many of the railroads in Texas. The witness is what we lawyers term an expert, and if we are not entitled to the opinion of witnesses who are trained in these lines, who can we look to?

The Chairman: Mr. Morrissey, do you know anything about—have you made a study of the I. G. N.?

A. Well,——

The Chairman: Wait a minute. Have you made a study [fol. 57-62] of the I. G. N.?

A. I have from time to time made a study of every line in Texas.

The Chairman: I mean so far as this hearing—these exhibits are concerned?

A. No, not for those exhibits, but prior to those.

The Chairman: All you know is that the Auditor gave you these statements?

A. I know some goor reasons why some of these lines are higher than the Santa Fe.

The Chairman: Well, that may be true as a general proposition, but I am talking about these exhibits.

A. No, sir, I got those exhibits from their officers.

The Chairman: I am just trying to get at—you have no personal knowledge of the reasons which enter into these exhibits to show that their per ton cost is so much greater than on others?

A. No, sir.

The Chairman: Well, the objection is sustained.

A. Now, then, going back to your question a while ago, generally when a railroad expects a shipment of 2,000 bales of cotton they don't wait until the last day to assemble the cars for that cotton; the cars are there prior to that. They can't afford to have that kind of movement waiting until the last minute for cars. Cars are not always available in the cotton season, and they may assemble those cars three or four days ahead of that shipment, but they are on per [fol. 57-63] diem all the time, and you've got to allow for that in arriving at these things.

Q. Mr. Morrissey, have you any reasons or suggestions to offer why *or* that account for the low operating cost on the G. C. & S. F.?

The Chairman: What is that, Mr. Ross? I didn't catch the question.

Mr. Ross: Read the question, Mr. Reporter.

(Thereupon the Reporter read the question.

The Chairman: All right. Go ahead.

A. Well, I would not—I have nothing very specific. I know in a general way that there is very close supervision; I suppose all lines have that, but *is* is almost intense on the Santa Fe. There is not a dollar spent that is not scrutinized and explanations called for for every expense, and we have found from experience that it pays to watch expenses, cutting out a great deal of over time and time and a half by getting the trains over the road.

Q. Are you through, Mr. Morrissey?—I beg you- pardon.

A. Yes.

Mr. Ross: Now, Your Honor, inasmuch as Mr. Fulbright has objected to the witness' stating the reasons for the discrepancies in the operating costs of the G. C. & S. F. versus the other Carriers named, and Your Honor has sustained it, I suppose he will withdraw his motion to strike the exhibits 2 and 3 from the record. I shall ask him to do [fol. 57-64] so, anyhow. I want him to be consistent.

Mr. Fulbright: I certainly don't want them in the record as evidence with nothing more to support them than has been shown here.

The Chairman: All right. Have you anything further?

Q. Turn to sheet 2 of Exhibit 1, which is a letter from Mr. Dunham, and shows a check of the cars used. That is the actual performance?

A. Mr. Dunham is here, and here is his letter.

Q. As you understand it, is that the actual performance?

A. Yes, that is what I understand it to be.

Mr. Ross: All right. That's all.

Judge Stedman: I want to ask one question.

The Chairman: All right, Judge.

Questions by Judge Stedman:

Q. I think probably it is involved in what has been stated, but I think there has been some confusion. With respect to backhauling of cotton from points between Cleburne and Temple, suppose that the compress at Temple should be congested and it should not be congested at Cleburne, what as to that condition producing a necessity or good reason for backhauling?

A. Well, I think it would be very good operating to compress your cotton at the nearest point.

[fol. 57-65] Q. At the nearest point?

A. Yes.

Q. Yes, but without regard even to that, if there is congestion at one point so that the cotton could not be handled expeditiously, and no congestion at the other, what influence ought that fact to have on the backhaul?

A. I don't catch your question.

Q. Well, suppose the Temple compress could not do the work on account of being overcrowded, and the Cleburne compress could get the cotton through expediously?

A. Well, if the haul was not too far it would be better to compress the cotton at Cleburne.

Q. That would furnish a reason for going back?

A. Yes.

The Chairman: Judge, I imagine you are confused over this backhauling. I don't recall any testimony as to backhauling of anything but the backhauling of the empty cars.

Judge Stedman: No, he asked about hauling it back for compression; that is what he asked him.

The Chairman: All right. Any other questions?

Judge Stedman: There is another question I want there. I don't want to go counter to the ruling of the Commission, but I want to qualify the witness a little further on another point, as to the reasons for the difference in the cost on the Santa Fe and the costs on the other lines.

[fol. 57-66] Q. I will ask you if you have any general familiarity with the facts relating to transportation on those two lines—I mean the M. K. T. and the I. G. N.?

A. Well, I think the M. K. & T. has a good many short runs.

Q. Well, now, that is it, but I was just asking you generally—I was qualifying you.

A. It is the cost of what we call constructive mileage.

Q. One moment. I want to ask you if you have any knowledge of the difference between the conditions on the Santa Fe and the conditions on the other lines. Have you any knowledge of the different conditions which would affect the cost of transportation?

A. Well, I would have to make analysis of the expenses to answer you.

Q. I don't mean in strict detail, but in a general way whether one is more expensive than the other?

A. Well, I started to tell you a moment ago in a general way that a road which has nice operating divisions of a hundred miles each can operate more economically than one that has less than a hundred.

Q. That would be one of the factors?

A. That would be one of the factors, but in a general way I could not tell you.

Q. Then you don't know in a general way why the cost should be greater on the other two lines than on the Santa Fe?

A. Oh, it might cost more for fuel on one line.

Q. I am just asking for facts, if you know the facts.

[fol. 57-67] A. No.

Judge Stedman: I will dismiss it, then.

The Chairman: Judge, the Katy and the other lines are here.

Judge Stedman: Not with the kind of witnesses to develop these facts first hand.

The Chairman: We want first hand information.

Judge Stedman: We want to obviate the necessity of bringing those witnesses here.

The Chairman: Anything further with Mr. Morrissey?

Mr. Thompson: Just one question.

Questions by Mr. Thompson:

Q. About the per diem—extra per diem cost foe uncompressed cotton that you estimated at Cleburne, suppose there is a given loading space to load 2,000 bales of compressed cotton, you have enough loading space to put the cars there in, say, two shifts or drags. Well, now, in loading the flat cotton it would take somewhere between two and two and a half times the number of cars, then instead of two shifts of cars you would have to have from four to five shifts to load the uncompressed cotton?

A. That is so.

Q. And that would tend to take additional time, wouldn't it, and partly account for the extra day you allow for the per diem?

A. Yes, sir; it takes more switching, too.

Mr. Thompson: That's all.

[fol. 57-68] The Chairman: All right. Stand aside.

[fol. 57-69] J. J. MORRISSEY, recalled, testified as follows:

Direct examination.

Questions by Mr. Ross:

Q. Mr. Morrissey, I believe there was offered here in evidence your testimony and exhibits put in in Docket 11965.

A. 11965, yes, sir.

Q. And an interpretation was placed thereon by the witness Dalzell. Have you something to say in respect to that evidence?

A. I have. Your Honor, I have in my hand here a copy of the testimony which I gave in the hearing before the Interstate Commerce Commission, Docket 11965, which was presented in this case by Mr. Dalzell or his representatives. It will be necessary for me to read a few extracts from this evidence that bear on this particular part of the case. On page 4: "Q (By Mr. Hershey) Mr. Morrissey, where you have shown the expense of handling this cotton in either the uncompressed or the compressed condition, that is the expense that is simply chargeable to the operation only?

A. Well, stated here that—Exhibit A says: 'Above expenses cover what are usually known as out-of-pocket expenses, and do not include maintenance of way and structures, or any overhead transportation, equipment, traffic or general expenses, as defined by the Interstate Commerce Commission.'" On page 6: "Q. (By Mr. Ross) Now, Mr. [fol. 57-70] Morrissey, these figures represent the actual increase in cost, out-of-pocket cost, to the Carriers, compressed versus uncompressed.

A. As worked out here, yes, sir.

Q. Now, a carrier ought to earn a fair return on the property invested to render the service, should it not, which would include, of course, maintenance of way, superintendence and other items which are not included in the cost of rendering this service?

A. Yes. This cotton should contribute a fair proportion to the upkeep of the property. I now offer my Exhibit No. 112.

Examiner Mullen: That will be received. (The statement was thereupon received in evidence, marked 'Defendants' Exhibit No. 112, Witness Morrissey,' and is forwarded herewith.)"

Mr. Fulbright: Your Honor, we object to taking up time in simply reading the exhibit. It is self-explanatory. We have offered it. If the witness——

The Witness: Here is the purpose of the exhibit, now, that I am coming to.

The Chairman: He is reading certain paragraphs.

The Witness: I want to clear up my evidence. "This exhibit is introduced for the purpose of showing what the total cost of freight service is on the Santa Fe road as compared with the $1.50 for transportation purposes only. Now, we can dismiss this very briefly. The cost of all freight operating expenses and maintenance amount to $4.99 per thousand [fol. 57-71] gross ton miles, and on the basis of one thousand net tone miles the cost was $11.19." Now, I think there is only one more here that I will take—Page 9: "Cross Examination, by Mr. Fulbright.

Q. If the railroads do save one dollar per bale, or 20 cents per hundred pounds, it would save $540 by hauling that cotton through flat. That would more than offset your $252 increase in operating costs, would it not?

A. Yes, but please bear in mind that this $252.13 is only the out-of-pocket expense. It does not take in a fair proportion of the operating and maintenance of the road at all."—Now, that is all I want to read. Now, I will show you where Mr. Dalzell got out on a limb. Under Mr. Dalzell's plan of operating expenses, as he testified to yesterday, and the interpretation that he put on Morrissey's Exhibit 110, this is how the public service would be conducted: The Santa Fe Railroad, which they have often done, very likely killed a cow belonging to Colonel Bill Cruze. Well, Colonel Bill had cows killed before by the Santa Fe, and he got paid for them; but when he presented his claim in the usual way, why, the Claim Agent says: "Why, we haven't any money to pay you, Colonel Bill. We are awfully sorry we killed your cow, but we have no money." Well, that's a new doctrine to Colonel Bill, he doesn't understand how such a thing could exist. So he says: "Why can't you pay me for my cow?" Well, the Santa Fe Claim Agent will say: "Why, we can't under Mr. Dalzell's system of operation; [fol. 57-72] you will have to go and see him." Why, he will say: "Who in the 'Sam Hill' is Mr. Dalzell?" "Why, he is the secretary of the Cotton Exchange in Houston; he is put-

ting this on the out-of-pocket basis, and he has made no provision for killing your cow." Now, the same application would apply to hitting an automobile on a crossing and maybe destroying valuable property, or burning up a man's property contiguous to the right-of-way, or by flooding his property through the embankment of the railroad. Now, Mr. Dalzell's plan——

The Chairman: Mr. Morrissey, pardon me, you are getting into an argument.

The Witness: I am just illustrating my case.

The Chairman: Well, you are arguing.

The Witness: I won't argue any more. I was going to say that Mr. Dalzell's plan would be feasible, and there would be some justification for it, if the Santa Fe were operating an aeroplane service, where they couldn't kill cows—cows don't fly; where they couldn't hit automobiles; where they wouldn't need any tracks, any section men, any bridge men, any interlockers. But the Santa Fe Railroad is operating a steam train, and here are a few of the expenses that Mr. Dalzell overlooked in putting a construction on my Exhibit 110, and this is taken from a brief filed with the Interstate Commerce Commission, which, I presume, I can read from. Mr. Dalzell, in his application of [fol. 57-73] 110, out-of-pocket expenses——

Mr. Fulbright: Now, Your Honor, I just wish to state here that it is all right for them to put in what Mr. Ross put in his brief in that case, provided they will simply permit me to put in what I put in my brief in that case; we will call it fifty-fifty, and I will be glad to furnish the Commission with a copy for that purpose.

Mr. Ross: Your Honor, I think the situation is entirely different. Mr. Dalzell has sought in this proceeding to reach out into another case and place an interpretation upon Mr. Morrissey's testimony that should not have been placed there. It places this witness's testimony, or attempts to place it in a wrong light, and this witness certainly has the right to explain his evidence and exhibits put in in 11965.

The Chairman: We think he has, too, but don't read excerpts from the briefs.

The Witness: I overlooked mentioning one fact——

Mr. Fulbright: The point is that Mr. Ross can handle that in his brief in this case, just as well as Mr. Morrissey

can on the witness-stand. The evidence is there, and I see no objection to it. I am trying to save time. Mr. Ross can put it into his brief, and I have no objection to his doing so.

The Witness: I overlooked stating—I put the cart be-[fol. 57-74] fore the horse in this evidence; I should have stated why I made that exhibit. I made that exhibit at the request of the Traffic Department, who asked me to figure out some difference between the out-of-pocket cost of handling compressed and uncompressed cotton. I saw the danger of figuring on that basis, and that was why I filed Exhibit 112, fearing that some man not well versed in operating expenses would seize upon the out-of-pocket expenses and confuse them with the operating expenses.

The Chairman: Now, Mr. Morrissey, it is sufficient, to explain that exhibit, to say that it only covers the out-of-pocket expenses, and not all of the expenses in operating a railroad.

The Witness: That is exactly it.

The Chairman: All right, that is sufficient; that covers it.

The Witness: All right, sir.

Mr. Ross: Now, suppose you state, Mr. Morrissey, what items of expense should have been included properly, that were not included.

The Witness: Well, the expenses of maintaining the track, the overhead equipment expenses, the traffic in general expenses, superintendence of transportation, train dispatcher, station employes, station supplies and expenses, signal and interlocker operations, crossing protection, telegraph and telephone operation, stationery and printing, insurance, clearing up freight wrecks, damage to property, [fol. 57-75] damage to livestock on right-of-way, loss and damage to freight, and injuries to persons; also taxes, which we have to pay, rentals, and interest on the value of the property investment. A railroad couldn't perform adequate service to the public on an out-of-pocket basis.

The Chairman: Mr. Morrissey, the Commission understands all that.

The Witness: All right, sir; I am glad they do; thank you. Now, that is all I have to say about Mr. Dalzell's interpretation.

The Chairman: All right, go ahead.

Mr. Ross: I believe you have some further exhibits, Mr. Morrissey.

The Witness: I have.

Mr. Ross: All right, we will offer those now. Proceed to offer those, please.

The Witness: This is the first one.

The Chairman: That will be received as Morrissey's Exhibit 97.

Mr. Ross: Just proceed, Mr. Morrissey.

The Witness: Well, to be brief and cut down the loss of time, the Santa Fe had a loss of $78,356.22 in the handling of cotton during the year ended July 31, 1923. That was for insurance and cotton destroyed on flat cars and other fires.

Mr. Ross: That is offered, Your Honor, as——

The Chairman: Now, just a minute. Mr. Morrissey, you have Flat Cotton destroyed by fire, $10,237.75.

[fol. 57-76] The Witness: Yes, sir.

The Chairman: Other cotton destroyed by fire, $32,050.42.

The Witness: Yes, sir.

The Chairman: Less collected from Insurance Company, $24,000.00——

The Witness: Yes, sir.

The Chairman: $24,613.75.

The Witness: Yes, sir, and Salvage, $1,155.00.

The Chairman: Why didn't you collect the entire amount of loss from them?

The Witness: We couldn't get insurance on flat cars. Cotton carried on open cars is carried at the Carrier's risk. The insurance that they charge on that is prohibitive.

The Chairman: Well, you have got Other Cotton $32,000.00 there, and only collected $24,000.00. Cotton other than flat cotton—than cotton on flat cars?

The Witness: Yes, sir.

The Chairman: Now, after paying $39,000.00 in premiums, you didn't collect the full amount of it.

The Witness: Well, there is salvage here.

The Chairman: The salvage is only $1,155.00.

The Witness: $1,155.00, yes, sir.

Commissioner Splawn: Do they insure for the full amount, Mr. Morrissey,—one hundred per cent of the value?

[fol. 57-77] The Witness: Other cotton destroyed by fire was cotton destroyed at depots and platforms, not on cars.

The Chairman: As I understood you, you did not get any insurance on any sort of flat cotton.

The Witness: Yes, sir.

The Chairman: Not when it is in box cars?

The Witness: Oh, yes, when it is in box cars.

The Chairman: You say here: Cotton on flat cars burned, $22,000.00.

The Witness: Yes, sir.

The Chairman: Now, you have here: Flat Cotton destroyed by fire, $10,000.00 and other cotton destroyed by fire, $32,000.00.

The Witness: Yes, sir.

The Chairman: The total of those two items is $42,000.00, and you only collected $24,613.75 insurance. I was just trying to find out——

The Witness: Well, I will tell you. There is an accounting feature that entered into these adjustments. This is taken from the Auditor's records, and they have adjustments in previous seasons' fires that they collected from the insurance companies on, which enters into this; but the net loss for this season, including those adjustments, is $78,000.00.

The Chairman: All right.

Commissioner Splawn: One of your exhibits shows how many bales the Santa Fe handled during this period.

[fol. 57-78] The Witness: Yes, sir. I think nine hundred and some odd thousand bales. That is in the Annual Report to your Commission.

Mr. Splawn: All right.

The Witness: Now, there is an exhibit that took two men twenty days to make up for this case——

The Chairman: Just before you leave this other exhibit, Mr. Morrissey. What do you mean by "Net loss to the Santa Fe, $78,356.22?"

The Witness: Well, that is the money they are out.

The Chairman: Sir?

The Witness: That is the amount of money they are actually out of pocket on this transaction.

The Chairman: You only have here in figuring the insurance claims and the burned cotton. Do you mean to say that figuring against the income, the freight that you collected for the handling of all this cotton, and then charging against it this expense of $78,000.00, and other transportation expenses, that this is your net loss—is that it?

The Witness: Yes, sir, the freight charge is figured up to the point of the fire always.

The Chairman: It just so happens, then, that the $78,356.22 as the result of your insurance and burned cotton, and amount collected for burned cotton, makes that actual loss?

The Witness: That is it.

[fol. 57-79] The Chairman: It just so happens that way?

The Witness: Yes, sir.

Commissioner Nabors: Mr. Morrissey, could you explain the kind of insurance policy you have? That might make it plainer why you didn't collect more.

The Witness: Well, they take it out from time to time. They don't carry blanket insurance; they just increase it or decrease it as the volume of the movement calls for it.

Mr. Hershey: Excuse me, were you through with your inquiry, Mr. Nabors?

Commissioner Nabors: How is that?

Mr. Hershey: Were you through with your inquiry?

Commissioner Nabors: Yes, sir.

Mr. Hershey: Mr. Morrissey, if you had carried more insurance and consequently collected more insurance, your premiums would have been correspondingly higher, would'nt they?

The Witness: Yes, sir.

Mr. Hershey: Now, as I understand, this $78,000.00 shown as a net loss to the G. C. & S. F. is the difference between what you paid out and what you took in?

The Witness: Yes, this is the net loss.

Mr. Hershey: In connection with fires?

The Witness: This is a book loss.

Mr. Hershey: Well, that is a loss, isn't it?

The Witness: Yes, sir.

[fol. 57-80] Mr. Hershey: Not only the book loss, but the actual out-of-pocket loss to the Santa Fe Railroad, by reason of what it paid out as against what it received.

The Witness: It is.

The Chairman: Now, Mr. Hershey, is it confined to fires? That is what I am trying to get.

Mr. Hershey: Confined to what? I didn't understand that.

The Chairman: Is it confined to loss by fire? I understood this exhibit to mean that the Santa Fe, on its more than nine hundred thousand bales of cotton that it handled for the season, that this $78,000.00 represented an actual loss on the handling of cotton.

Mr. Ross: No, fire losses.

The Witness: Yes, sir.

The Chairman: He didn't say that.

Mr Ross: The exhibit shows that at the top.

Mr. Hershey: Insurance only covers fire. I don't think insurance would mean anything else.

The Witness: Yes.

Mr. Hershey: That doesn't include theft.

The Witness: And another thing I think that possibly has been overlooked here, and that is this,—that this flat cotton destroyed by fire was carried on flat cars, as well as the cotton on flat cars burned. The two classes of cotton were shown separately. The cotton on flat cars burned, $22,000.00, represents the price of the cotton. Flat cotton destroyed by fire is—on account of this question of flat [fol. 57-81] cotton, we wanted to show the expense separately.

Mr. Hershey: Now, this other, Cotton destroyed by fire, might have been cotton contained in open cars, too?

The Witness: Yes, around depots and platforms.

Mr. Hershey: And in open cars—stock cars, for instance.

The Witness: Stock cars.

The Chairman: All right.

Mr. Ross: You have prepared an exhibit, haven't you, Mr. Morrissey, showing the capital investment——

The Witness: I have.

Mr. Ross: —of the G. C .& S. F., and the facilities used in the handling of cotton on its line of railroad in Texas?

The Witness: This is especially prepared, by my instructions, by two engineers, and it took them about twenty days to make it.

Mr. Ross: This consists of seventeen sheets, Your Honor.

The Witness: To be brief, it shows that the investment

in the existing cotton facilities, including track, and right-of-way and one thing and another, is $603,714.26.

Mr. Ross: Now, that is the total investment.

The Chairman: This will be received as Morrissey's Exhibit No. 98.

Mr. Ross: The results of that exhibit show, I believe, as you have stated, that the capital investment in facilities [fol. 57-82] on the G. C. & S. F., as of August 21, 1923, devoted to the handling of cotton, is of the value of $603,714.20?

The Witness: Yes, sir.

Mr. Ross: Now, from your experience in connection with the operation of the G. C. & S. F., if the movement of flat cotton is increased substantially, would those facilities also have to be increased?

The Witness: Yes. In the interior? Yes, I would say so.

Mr. Ross: Wouldn't they also have to be increased at the ports?

The Witness: Very much so.

Mr. Ross: Have you any other statement in connection with that cost study or that exhibit that you want to make?

The Witness: No, not in connection with this.

Mr. Hershey: Mr. Morrissey, I notice that in some of these sheets that I have looked over the print is not very good. I hope those copies the Commission got are clearer than the one I have.

The Witness: Well, give that one to the Chairman.

Commissioner Splawn: This sheet contains a summary—

The Witness: Yes, sir.

Commissioner Splawn: —and the others are the details?

The Witness: Yes, sir.

[fol. 57-83] The Chairman: All right.

Mr. Ross: Have you prepared some further exhibits, intended to show the difference in operating conditions in Texas and some of the other States and districts?

The Witness: Yes, sir.

Mr. Ross: I wish you would proceed with the offering of those.

The Witness: I have here what they call "graphs," made by the Engineering Department from figures which I furnished them.

Mr. Ross: This is offered as the next exhibit.

The Chairman: This is Morrissey's Exhibit No. 99.

Mr. Ross: Just proceed to explain that exhibit, Mr. Morrissey, please. I believe the exhibit consists of nine sheets.

The Witness: Nine sheets, if I am not mistaken. Some of those figures I got from the Southwestern Bureau—Statistical Bureau at Chicago, some I made up from the Railway Age, which I have here with me.

Mr. Ross: Of what date?

The Witness: Of August 11, 1923.

Commissioner Splawn: Mr. Morrissey, you are an experienced auditor and accountant. Have you any explanation of why the Texas roads show so much less earnings than the carriers in the Western District of the Southwestern Roads?

The Witness: Well, I will refer Your Honor to the second sheet, which is what we commonly call density of traffic, and you will find that Texas is at the bottom of the list.

[fol. 57-84] The Chairman: Now, in figuring that density of traffic did you take into consideration the differential territory?

The Witness: Well, this traffic is the tons one mile per mile of road.

The Chairman: Sir?

The Witness: This is the tons one mile per mile of road, actually handled by the railroad, regardless of where or how they got it.

The Chairman: Does it include both interstate and State traffic?

The Witness: Yes, sir, all traffic.

Mr. Ross: Suppose you just take that exhibit, sheet by sheet, and briefly state what it shows, Mr. Morrissey. Take up sheet 1 first.

The Witness: Sheet 1 shows that the rates——

The Chairman: Mr. Ross, this is perfectly self-explanatory, unless for some special reason you want to use it.

Mr. Ross: I don't want to burden the record, Your Honor.

The Chairman: Well, it is as well prepared and clear as you can make it.

Mr. Ross: We tried to put it in graphic form, to show the return.

The Witness: Well, the only thing I would like to men-
[fol. 57-85] tion about it is this,—that the first six sheets cover the year 1922—the calendar year, and the last three sheets cover the six months ending June 30, 1923; so that you have a period of one year, and another period of six months.

The Chairman: All right; is there anything else, Mr. Morrissey?

Mr. Ross: I want to specifically call the Commission's attention to the earnings of the Illinois Central shown on this exhibit.

The Witness: Yes, I have, sir. I have another here that shows all this information by individual roads for the six months ended June 30, 1923.

The Chairman: All right.

The Witness: And it is so comprehensive and put up in such shape that I think it will hardly be necessary to waste any time explaining it.

Mr. Ross: That is offered as the next exhibit, Your Honor.

The Chairman: That will be Morrissey's Exhibit No. 100.

Judge Stedman: Mr. Morrissey, in order to avoid any possible confusion, these figures with respect to the rate of return are based upon the tentative valuations found by the Interstate Commerce Commission?

The Witness: Yes, it states right on the face of the exhibit——

Judge Stedman: I understand. Now, wait a minute.
[fol. 57-86] These other valuations—the exhibits introduced yesterday by Mr. Lovely, were based upon certain Texas valuations?

The Witness: This states what it is. It is the "Property Investment of December 31, 1922, reduced to Basis of Tentative Value in Ex Parte 74."

The Chairman: Mr. Morrissey, how do you account, if you can account for it, for the ratio of operating expenses being so much higher in Texas than they are in any other territory?

The Witness: I will tell you now what I think causes that principally, and that is the lack of revenue. You obtain your operating ratio by dividing your gross revenue into your operating expenses. The larger your revenue, the

less your ratio will be, as a general rule; the smaller your revenue, the greater will be your ratio.

The Chairman: Well, now, of course, I think that is obvious.

The Witness: That is obvious, yes, sir.

The Chairman: All right; go ahead with your next exhibit.

Mr. Ross: In other words, Mr. Morrissey, if you had more traffic—if the traffic density were greater here, you would probably make more money?

The Witness: Yes.

Mr. Hershey: Or higher rates on your present traffic?

The Witness: Yes.

[fol. 57-87] Mr. Hershey: I didn't want you to overlook that, Mr. Chairman.

The Chairman: All right, have you any other exhibits?

The Witness: Yes, sir. Now, this is somewhat similar to the rate of return that I have already furnished in this case, except that it includes the rate of return for the year 1922; and the only difference is that it has 1921 on there as well as 1922.

The Chairman: That will be Mr. Morrissey's Exhibit No. 101.

Judge Stedman: Well, another thing, too, Mr. Morrissey, which requires an explanation—it is shown here that these are Class 1 roads.

The Witness: Oh, yes, that is on the face of the exhibit, yes.

Judge Stedman: I understand that, and the exhibit offered yesterday covered all the roads, without regard to the classes?

The Witness: Well, I don't know.

Judge Stedman: Well, the classes were not considered.

The Witness: That's all the exhibits I have, Your Honor.

The Chairman: All right; anything further from Mr. Morrissey?

Mr. Ross: Any further statement you would wish to make, Mr. Morrissey?

[fol. 57-88] The Witness: No, I don't think so.

The Charman: Any cross examination of Mr. Morrissey?

Mr. Fulbright: Mr. Morrissey, you presented an exhibit here which showed——

Judge Stedman: I haven't quite finished the direct examination, Your Honor.

The Chairman: Oh, I though- you were through.

Judge Stedman: No, sir.

The Chairman: I didn't understand you.

Mr. Fulbright: Go ahead.

Judge Stedman: Mr. Morrissey, I wish you would examine a sheet in an old exhibit filed before the Interstate Commerce Commission in the Cotton Rate Hearing, Exhibit No. 9, Sheet 3. In what hearing was that used?

The Witness: This book, I see, bears the name of William D. Williams. God be good to him. A good old man. It was used in Hearing No. 1410, at the Hotel Galvez, in Galveston.

Judge Stedman: What year was that?

The Witness: I think it was 1913.

Judge Stedman: 1913?

The Witness: I think so. Now, that is my opinion.

Judge Stedman: Now, that page——

The Witness: I made that page.

Judge Stedman: That sheet, you made that?

The Witness: I did.

[fol. 57-89] Judge Stedman: Exhibit 9, Sheet 3,—now, what does that show at that time? I am going to try to bring it down to date, if I can.

The Witness: That shows a comparison of the final result of handling cotton, as compared with other freight.

Judge Stedman: Yes, sir; what difference does it show?

The Witness: It shows that after deducting all the extra and special expenses peculiarly attached to the handling of cotton, that the revenue per net ton mile, less that cost, showed a decrease or 3.5 per cent under all other freight.

Judge Stedman: Does that reflect the difference in cost of cotton as compared with other freight?

The Witness: Well, I am speaking of revenue in this last.

Judge Stedman: Well, you have got cost above there.

The Witness: Yes, the cost is in here.

Judge Stedman: What is the difference in cost—is there any difference shown there?

The Witness: Yes, $274,551.49.

Mr. Fulbright: Mr. Chairman, I don't know how far they are going with this, but we certainly do object to bringing up cost statements more than ten years old.

[fol. 57-90] Judge Stedman: Well, I can't make this mathematically accurate, but I can explain why we haven't brought it to date, or can have Mr. Morrissey do it, and show that this is of some value.

The Chairman: How far do you purpose going into that?

Judge Stedman: I want to show, in the light of an exhibit he compiled in 1913, indicating a greater expense in the handling of cotton than other traffic,—I want to show that upon the same basis the cost is greater to-day, not mathematically accurately, because I can't do it, and I will show why we can't do it—because the records are not kept as they were at that time, strictly.

Mr. Fulbright: We shall certainly object to trying to show anything like that in this manner. It was manifestly an error ten years ago, and they are going to build some guess-work on that, and express some opinions upon matters upon which figures should be obtained, and not the rankest guesses.

Judge Stedman: Now, if you will wait until I ask the question you will see if it is a guess.

The Chairman: Well, let's see. Let's not go too far.

Judge Stedman: No, sir, I won't. Mr. Terry suggested this over the telephone yesterday, and he is very thorough and accurate.

Mr. Bullard: I wish to state, Mr. Chairman, that we will go into this thoroughly, going back ten years.

[fol. 57-91] Mr. Ross: That is perfectly all right.

Judge Stedman: No, what does——

The Chairman: The Chairman: Let's see. Just what does that show as to the cost of handling cotton, as compared with the cost of handling other freight?

The Witness: It shows that the extra cost of handling cotton, was $274,551.49.

The Chairman: On the same kind of freight?

The Witness: This is on cotton, all of it.

The Chairman: Well, I mean, you are comparing—how do you make the comparison, cotton with other freight, on what basis?

The Witness: Light loading of cotton as compared with the principal commodities; extra empty car miles made by reason of the rapidity of the cotton movement; extra expense in connection with the compressing and concentration of intrastate cotton; interest and depreciation on special cotton facilities required for that traffic; interest on value and maintenance of excess tracks made necessary by cotton movement; cost of loading and unloading intrastate cotton; cost of extra insurance on cotton as compared with other freight; interest and depreciation on locomotives that would not be required in regular movement.

Judge Stedman: That is it. Now, those are the necessary expenses which differentiate cotton from other traffic expenses?

The Witness: Yes, that is what I said, yes.

[fol. 57-92] Judge Stedman: Now, that was intrastate cotton. Why did you not compile similar figures with respect to the present time?

The Witness: Because the Railroad Administration changed the system of making annual reports, as I understood it, and the information from which I compiled this at that time is not now available.

Judge Stedman: That is, as to the actual figures?

The Witness: They have discontinued separating cotton into the intrastate in interstate——

Judge Stedman: Yes.

The Witness: As they used to do in the olden times.

Judge Stedman: Now, I will ask you to state whether or not conditions with respect to the matters shown here are substantially the same now as they were previously.

The Witness: Now, what are you asking me about—ten years ago?

Judge Stedman: Yes, relatively or——

The Witness: Why, the rates went up and expenses went up. I really wouldn't undertake to put a definite figure on them. That would be very far-fetched, I think.

Mr. Hershey: The method of handling.

Judge Stedman: The method of handling, I mean to say. Is the method of handling the same?

The Witness: Oh, that is practically the same.

Judge Stedman: That is the same?

The Witness: Practically. Very little difference.

[fol. 57-93] The Chairman: Judge Stedman, you are really not contending that that is a proper method of showing the cost—the result of handling cotton to-day, taking that exhibit and the witness, who now says he is uncertain about making a comparison with ten years ago—you don't think that is a satisfactory way of putting it before this Commission, do you?

Judge Stedman: I don't think, Your Honor, that these figures could be used as illustrating the present condition, but I do think, in the absence of a better way of getting at it—and we can't get it, as he has shown—that that is the way of arriving at a probability. Now, all moral truth depends upon moral evidence; there is no mathematical demonstration of any of these things, and you get at it in the best way you can, provided your testimony is of a relevant character. We can't mathematically show this with figures—we can't show the figures, but we can show a probably condition, and that is all you can do in any case, probably, outside of a few matters that are strictly mathematical. We are not claiming it is the same figures, but that it indicates sufficiently the difference between the cost of handling cotton and other things to render the same sort of process applicable to the development of this case,

The Chairman: Of course, if you had prepared—your Carriers had prepared the necessary statistics showing the cost of handling to-day, and some definite adherence, if you could, it would have been, of course, admissible; but it oc-[fol. 57-94] curs to me that to take that exhibit and then undertake to bring it down by merely inquiring into and contrasting the conditions now with ten years ago, it seems to me to go so far into the realm of speculation that it would not be a proper method of proving it.

Mr. Fulbright: The interests that I represent, certainly would object to trying to arrive at any cost by any such method, which Judge Stedman says is simply piling some probabilities or estimates upon estimates made some years ago, for the purpose of arriving at some present day probability. I think it is getting too far afield.

Judge Stedman: I am not piling one on top of the other.

Commissioner Splawn: I want to ask you, Mr. Morrissey—you read off the items here in the difference of the ex-

pense of handling cotton and other products, that is what you have done, is it?

The Witness: Cotton is compared with the balance of the freight handled by the company.

Commissioner Splawn: At the time you prepared the exhibit, in each of the instances it was more expensive to handle the cotton than the other commodities?

The Witness: In each of these——

Commissioner Splawn: I say when you prepared this exhibit it did cost more to handle cotton than the other commodities, for each of the reasons that you mentioned there? [fol. 57-95] The Witness: Yes, sir, that is the way it is.

Commissioner Splawn: Now, in the year of our Lord, 1923, can you say positively that the same condition obtains, without giving the percentage—not swearing to the percentages, but can you say positively that it costs more to handle cotton now than to handle the other commodities, and for the reasons that you gave in 1913?

The Witness: Well, I will cite one instance, now, that is, those special facilities we have in 1923; $603,000.00, which at six per cent would be $36,000.00 a year; that would be one item; and, I suppose—now, we went to a great deal of pains and trouble to make this exhibit; I suppose I had off and on fifteen to twenty men working on this; but this one particular sheet here, where the final analysis was made, I made it myself, that was my work.

Commissioner Splawn: And that showed the percentages in 1913?

The Witness: It was for the fiscal year 1912?

Commissioner Splawn: 1912?

The Witness: Yes, sir.

Commissioner Splawn: You do not undertake to say that those percentages obtain now, but you state positively, do you, that it does cost more to handle cotton now than it does to handle other commodities, and for the same reasons that you assigned there in 1912?

Judge Stedman: That is what I was trying to get at [fol. 57-96] exactly.

The Witness: Well, if I would say that the same conditions prevail, nobody would believe me; that would be going too far with it. But there is undoubtedly an extra expense, and I tried to make this same comparison, but I found that the material was not available for making it.

Mr. Ross: That is, for use in this case?

The Witness: For use in this case; and I would have liked very much to have made a similar comparison and go to all the trouble of gathering all these details which are attached here in support of that statement—every bit of it is supported—I would have liked very much to have done it, but I didn't have the foundation, so I had to abandon it.

Mr. Ross: Due to the fact that the G. C. & S. F. records are not kept in the same manner now as they were kept at the time this exhibit was made?

The Witness: Due to the fact that the Interstate Commerce Commission does not require it any more in their annual reports—they do not require the separation of cotton as they did then. It could be worked up from the G. C. & S. F. records, but it would take an awfully long time; it would mean going over the original waybills.

Commissioner Nabors: Somewhere in this testimony, I think we had it from some of the Carriers that cotton was [fol. 57-97] the most attractive freight that they had. Now, doesn't this testimony that you are now offering tend to show that it is the most burdensome or least attractive? Wouldn't that confuse us, if that evidence develops in that way?

The Witness: Your Honor, I didn't say that it was very attractive. I didn't say that.

Commissioner Nabors: But that is the evidence in this case. You remember that—that some Carrier stated that that was the most attractive line of freight they had.

Mr. Ross: No, Your Honor, Mr. Dalzell offered that.

Commissioner Nabors: Under present conditions—that is, for recent years. I don't remember the exact year.

Judge Stedman: Mr. Commissioner, if you will permit me. I don't want to interfere with you, but there was an advertisement of some sort offered—of that sort; but because cottom costs more than all other traffic would not demonstrate or would not prove at all that it was the least attractive; there might be something else less attractive, but in comparing cotton with all other traffic it might be less attractive than the aggregate of the other traffic, yet there might still be other traffic that is less attractive.

The Chairman: Judge, the Commission thinks that is far enough to go with that.

Judge Stedman: All right.

Mr. Ross: One further question, Mr. Chairman.

The Chairman: On this matter?

Mr. Ross: Yes, sir.

[fol. 57-98] The Chairman: I would rather you wouldn't ask any more questions on that.

Mr. Ross: As I understand, the compresses were located in 1913 at the same point they are now located?

The Chairman: Well, I don't know about that, Mr. Ross, and if you start in on that——

Mr. Ross: Do you know whether that is true?

The Witness: No, I do not.

The Chairman: —you start into an endless number of things to be taken into consideration.

Mr. Ross: I think that is true, Your Honor, and therefore the relative situation would not be very greatly different.

The Chairman: I think this is far enough to go with that statement.

Mr. McKnight: May I ask the witness a question?

The Chairman: Well, Judge McKnight.

Mr. McKnight: Mr. Morrissey, what have you there?

The Witness: A publication issued by the Bureau of Railway Economics.

Judge Stedman: Economics?

The Witness: That is what I said. Showing the railway revenues and expenses for the month of June, 1923, for Class 1 railways and large switching and terminal companies.

Mr. McKnight: Now, down at the bottom of the sheet what is shown?

The Witness: The rate of return for the six months [fol. 57-99] ended June 30, 1923.

Mr. McKnight: What does that show the rate of return of the Southwestern Roads for that period to be?

The Witness: 3.53 per cent.

Mr. McKnight: For the Southwestern District?

The Witness: That is the Southwestern. For the Western District, 3.62.

Mr. McKnight: That is all. I just wanted to bring this information in.

Judge Stedman: Now, that is Class 1 Roads that is shown there?

The Witness: And it says Switching Companies, too; large Switching Companies.

Mr. Hogsett: Referring to your Exhibit 98, showing capital investment of the Santa Fe, is the capital investment of the Santa Fe south of Rosenberg to Galveston in any way comparable with the capital investment from Houston to Galveston, via the Santa Fe?

The Witness: You will pardon me if I refuse to get into that Houston and Galveston controversy. I am giving you the entire G. C. & S. F. Road.

Mr. Hogsett: Where in this statement have you included the Santa Fe from Houston to Galveston.

The Witness: Well, it is all in there. Now, you can find it.

Mr. Hogsett: Then, would you say that any part of the service south of Rosenberg to Galveston is the same as the service by the Santa Fe from Houston to Galveston?

[fol. 57-100] The Witness: I won't say anything at all about it.

Mr. Hogsett: That is a fair question, Mr. Chairman.

The Chairman: Well, he says he doesn't know anything about it.

The Witness: I haven't given it a moment's thought.

The Chairman: If he doesn't know, he can't answer it. Any further questions?

Mr. Fulbright: I have some question I want to ask him.

The Chairman: All right; go right ahead.

Cross-examination.

Questions by Mr. Fulbright:

Q. Mr. Morrissey, take your Exhibit No. 97, which showed the losses paid on cotton. Do you know how that contrasted with the total amount of claim losses paid on your losses for the same period?

A. Now, do you mean freight losses and damage?

Q. Yes.

A. I don't, Mr. Fulbright. I didn't make any comparison on it.

Q. Isn't it a fact that for the year 1922 the Report of the American Railway Association, Freight Claim Division, shows that the total losses paid on cotton from all roads in

the United States, including the losses by fire, was $430,853.00?

A. Well, I will take your word for it. I guess you are [fol. 57-101] right on it. That is the loss and damage.

Q. And that is analyzed into: $138,877.50 loss on account of unlocated loss, or losses due to error of employes and such as that, and the items $268,487.00 under the heading of damage, which in the notation includes fire and marine loss and damage, and $23,489.00 for delay.

The Chairman: All right; anything further, Mr. Fulbright?

Mr. Fulbright: Yes, sir.

Q. In your Exhibit 98 I notice—I just wish you would explain to me upon what theory you made a one-half cost allocation—take Sheet 2, at the station of Wallis you show there two tracks and the length of them, and the cost. Now, you say one half of the cost is allocated. Will you explain that?

A. That shows that on that track there was some other industry, or a stock pen likely, and it would not be fair to charge cotton with the full length of the approach to that track; therefore, it was divided on the basis of the number of industries on the track. In some instances you will find it to be one third, if you look through that book.

Q. Well, now, you have two tracks there. Are you familiar with the station of Wallis? That is a junction with the S. A. & A. P. Railway.

A. Well, I wouldn't say that I knew all about that place, [fol. 57-102] because we are not—in going by in a train, that would be my experience at Wallis.

Q. Now, you took all of the cost of the cotton platform and all of the cost of the land on which it was situated, didn't you?

A. The site of the platform—just the site.

Q. The site?

A. Yes.

Q. And then when you came to the track and the land on which the track was situated, that is what you allocated, based upon the question as to whether there were other industries on it?

A. I think this foot-note here will explain that: "Total value exclusive cotton track, portion shown 'Remarks Col-

umn' for track approaching cotton platform." Now, where there is nothing on the track but a cotton platform, it will be charged up one hundred per cent to the cotton facilities, but where the cotton platform is on a track that also serves the house, or if it doesn't serve the house it serves the stock-pen, the allocation would be one-half of the track.

Q. Would you say that the expense of handling cotton is greater than the expense of handling livestock?

A. Well, now, there has been a great deal of controversy over that, and in this particular case I haven't freshened up my mind on that subject.

Q. Have you an opinion on it?

A. Well, livestock is such a small per cent of our business [fol. 57-103] that really I don't know.

Q. Cotton is a very much larger percentage and a more important part of your business, isn't it, Mr. Morrissey?

A. Yes, sir, in a good season we derive more revenue from cotton than we would from livestock, yes.

Q. The Santa Fe does handle a great deal of livestock, does it not?

A. They handle a great deal of livestock, but they load very light—very light loading.

The Chairman: Before you get away from that question, Mr. Fulbright, I would like to ask Mr. Morrissey this question: In your allocation of one-half of the cost of these facilities to cotton, that is more or less an arbitrary figure, is it not?

A. Unquestionably; based on the Engineer's knowledge of that particular location.

The Chairman: Well, now, you take the station which Mr. Fulbright inquired about—Wallis. You have allocated one-half of the cost of the track—the land and so forth there—to the cotton traffic. You have done that, regardless of whatever else might be handled on that track, whether or not it is the house-track and the public team track, where all of your other carload shipments are handled—household, immigrant outfits, in fact, all of your—assuming it might be a team-track, regardless of those facts you have just taken an arbitrary figure and made it a one-half allocation?

A. Well, now, Your Honor, it is not a parcticable thing [fol. 57-104] to have a team-track and a cotton platform

and another industry all on the same track, because the team-track cars would block the operation of the compress.

The Chairman: I understand that, Mr. Morrissey, perfectly. The question I am getting at is, do you think that allocating one-half of all that cost to the one item of cotton is really a just allocation?

A. Well, it is as you say, Your Honor, it is more or less arbitrary.

The Chairman: All right.

Mr. Fulbright:

Q. How many carloads of revenue freight did your line handle in 1922, Mr. Morrissey?

A. I would have to look at the Annual Reports to tell you that. I couldn't carry that in my mind.

Q. Do you know, approximately, what proportion of the cars handled revenue freight were used for handling cotton?

A. No, I couldn't even make an approximate of that.

Mr. Ross: Do you think, Mr. Morrissey, that the allocation of the tracks here, that you have shown, is fair?

The Witness: Well, they were made by competent engineers from the records of the Engineering Department, men skilled in such work, and I think it is about as near to being correct as any way it could be had, other than going on the ground with a tape-line.

The Chairman: Well, of course, the amount—the total [fol. 57-105] amount of business handled over that particular track, that is what would determine.

The Witness: That is what would govern, undoubtedly.

The Chairman: And to make it accurate, you would have to figure out the total amount of business handled over that track—cotton and all other business—and then allocate it?

The Witness: Well, I wouldn't have that exhibit here if we had to go to that means, because it would take a year to do it.

The Chairman: That is all.

Judge Stedman: That is all.

The Chairman: All right, stand aside, Mr. Morrissey.

[fol. 57-106] Introduced at Austin

Comparison of Handling 2,000 Bales of Cotton Flat and Compressed from Cleburne to Galveston, an Estimated Average Haul of 318 Miles

Average number of flat bales per car		29.8
Average number of compressed bales per car		68.7
Number of cars required to carry 2000 bales flat		67
Number of cars required to carry 2000 bales compressed		29
Average tare weight of car in tons		20
Average weight per bale in pounds		522
(X) Assembling 67 cars at Cleburne estimated	$67.00	
29 cars figured proportionately	29.00	
		38.00
Per diem on 67 cars while assembling and loading 4 days	268.00	
Per diem on 29 cars while assembling and loading 3 days	87.00	
		131.00
Flat cotton:		
67 cars 20 tons x 318 miles	426,120	
Back haul on 29 empties 318 miles	184,440	
2000 bales 522 tons x 318	165,996	
	776,556	
Compressed cotton:		
29 cars x 20 tons x 318	184,440	
2000 bales 522 tons x 318	165,996	
	350,436	
Surplus ton miles flat cotton	426,120	
Average cost of maintenance and operation January to June incl. 1923 (less cost of frt. cars) per 1000 gross ton miles	$3.20	
426,120 x 3.20 =		1,363.58
Per diem enroute on 38 surplus cars		114.00
Making final delivery at Galveston surplus cars		90.00

(X) If all the cotton moved flat there would be no compress to make empties for loading so the cars must be assembled.

Per diem while unloading and movement and from compress 38 cars three days	114.00
Per diem or back haul of 29 cars 3 days	67.00
Interest at 6% on the Government Valuation	969.64
Surplus cars proportion of taxes	156.17
	3,113.39
Average of above per 100 lbs	.30
Average excess per bale	$1.56

[fol. 57-107] Copy of Exhibit Filed by J. J. Morrissey Before the Railroad Commission of Texas, Docket 2234

Gulf, Colorado and Santa Fe Railway Company

Cotton Statistics, State of Texas, Year 1922

Total tons of cotton handled by G. C. & S. F. in the State of Texas, year 1922	235,827
Reduced to pounds	471,654,000
Bales at 522 pounds per bale	903,552
If loaded compressed at 68.7 bales per car the cars required would be	13,152
Actual number of cars handled	20,552
If loaded flat at 29.8 bales per car, cars required would be	30,320

Summary

	Cars
The cotton actually moved in	20,552
If compressed and loaded 68.7 per car, cars would be.	13,152
which would be a saving of	7,400
If moved all flat at 29.8 per car, cars required would be	30,320
an increase over compressed of	17,168

Cotton statistics copied from the annual report of the year 1922 to the Railroad Commission of Texas.

Surplus cars required for flat cotton over the number required for compressed cotton would cover 130 miles of track.

(Here follow Exhibit No. A-88, marked side folio pages 58-1, 2, 3, 4, 5, 6, 7, 8, and 9, and Exhibit No. A-104, marked side folio page 59)

I. C. C. Docket 17000

EX PARTE No. 87

EXHIBIT No. a 88

Exhibit showing comparison of existing rates with distance and maximum rates applicable between the State of Texas on classes and commodities.

Comparison is made for distances of 20, 35, 50, 75, 100, 125, 150, 175, and 211 miles.

The statement also shows what the maximum rate is in every instance, and at what distance the maximum rate is reached.

Tariff authority for all rates shown, except as otherwise noted, Texas Lines Tariff No. 2-I, A. C. Fonda's I. C. C. No. 174.

Exhibit No.....

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
Cotton		28	35	43	55	64½	68	71½	74½	80	211	80
Classes: First	(1)	41½	48½	55½	67	78½	90	101	111	123½	501	170
	(2)	53½	61	67½	79	90½	102	113	123½	135½	501	182½
Second	(1)	35	41½	47½	57	66	76	85½	94	104	501	144½
	(2)	45½	52	57½	67½	76½	87	97	105½	115	501	155
Third	(1)	29½	33½	38½	47½	55	62½	70½	78	85½	501	118½
	(2)	38½	43	48	56½	64	71½	79½	87	95	501	128
Fourth	(1)	24½	29½	33½	40	47½	54	61	67	73½	501	102
	(2)	32½	36½	41½	48	55	61	69	74½	81½	501	109½
Fifth	(1)	18½	24	26½	32½	37	43	48½	53½	59½	501	82
	(2)	24½	29½	33	38½	43	49	55	59½	65½	501	88
A	(1)	20½	25	28	35	41½	46½	53½	57½	64	501	88
	(2)	26	31	34	41½	47½	52	59½	64	70	501	94
B	(1)	15½	20½	22	28½	31	36	40	44½	49	501	69
	(2)	21	26	28	33	37	42	46½	50½	55½	501	74½
C	(1)	14	17	19	24	27½	31	35	38½	43	501	59½
	(2)	18½	21	24	28	32½	36	39½	43	48	501	64
D	(1)	12	14½	17	20½	24	26½	30½	33½	37	501	51
	(2)	15½	17½	20½	23	26½	29½	33½	36½	40	501	54
E	(1)	9	12	14	17	20½	23	25	27½	30½	501	43
	(2)	12	15½	17	20½	23	26	28	30½	33½	501	45½
Acid, Sulphuric	40,000 (1)	8	11	12	14	15½	17	18½	20½	23	276	27½
(Item 3095)	(2)	11	14	15½	17	18½	20½	21	23	26	276	30½
Empty wooden barrels and kegs	11,200 (1)	9	12	14	17½	19	20½	21	22	24	701	38½
(Item 1400)	(2)	12	15½	17	20½	22	24	24½	25	26½	701	39½
Common and Vitrified brick, and Fire clay. (Item 1420-A)	50,000 (1)	5½	6½	6½	7	8	9	10	11	12	701	22
	(2)	6½	7	7	8½	9	10½	11	11½	13½	701	23
Fire brick, radial brick, enameled brick, brick tiling, etc.	40,000 (1)	6½	7	7	8½	10	11	12	12½	14½	701	28½
Item 1430-C)	(2)	7	8	8½	10	10½	12	12½	14	16	701	29½
Cottonseed cake and meal, vegetable cake and meal	40,000 (1)	7	8½	10	13	14	17	18	20	22	951	44
(Item 1461-C)	(2)	9	10½	12	15	16	19	20	22	24	951	44
Cottonseed hulls, cottonseed bran, rice bran and rice hulls	30,000 (1)	5½	7	8	9½	10½	12	13½	15	16	951	33
(Item 1461-C)	(2)	7	8½	9½	11	12	13½	15	16½	17½	951	33
Cottonseed oil, copra or cocoanut and peanut oil	30,000 (1)	9	10½	12	15	17	20	21½	23½	26	951	53
(Item 1461-C)	(2)	11	12½	14	17	19	22	23½	25½	28	951	53
Cottonseed hull fibre or shavings	30,000 (1)	11	14	16	19	21	24	27	30	32	951	66
(Item 1461-C)	(2)	14	17	19	22	24	27	30	33	35	951	66
Furniture	12,000 (1)	24½	30½	33½	43	48½	57½	64	69	76	351	93
(Item 1500)	(2)	30½	36½	39½	48½	55	64	70	74½	82	251	93
Citrus Fruits	24,000 (1)	32	38½	39½	46½	53	58	65	69	75½	476	98½
(Item 1530)	(2)	37½	42½	45½	53	59	63½	71	75½	81½	501	103½
Potatoes and Tuftlps	26,000 (1)	11½	14	16	20½	23	26½	29½	33	37	231	38½
(Item 1530-B)	(2)	14½	17	19½	23	26	29½	33	36	38½	201	38½
Vegetables in brine	20,000 (1)	11½	14	16	20½	23	26½	29½	33	37	231	38½
(Item 1530-B)	(2)	14½	17	19½	23	26	29½	33	36	38½	201	38½
Melons, green vegetables and fresh fruit	24,000 (1)	14	17	19	24	26	29½	33	36	40	231	41½
(Item 1530-A)	(2)	17	20½	22	26½	29½	33	36	38½	41½	201	41½
Ground meat and bone scrap	40,000 (1)	11½	15	17	19½	21½	24½	25½	30	35	201	35
(Item 1575-A)	(2)	15	18	20½	22½	25	26	29½	34	35	201	35
Unshelled peanuts and peanut hearts	30,000 (1)	10½	13½	15	19½	21½	26	28	29	31	301	34
(Item 0461) (Intrastate only)	(2)	13	16	17½	22	25	28	30	31	32	301	34

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
Flour and articles taking same rate, pearl barley, farina, oatmeal, cracked wheat, rolled wheat, grits, hominy, etc.	40,000 (1)	8	10	11	14	15	17	18	19	21	351	33
(Item 6320) (Intrastate only)	(2)	11	13	14	17	18	20	21	22	24	351	33
Wheat and grain products	40,000 (1)	8	10	11	14	15	17	18	19	21	351	33
(Item 6320) (Intrastate only)	(2)	11	13	14	17	18	20	21	22	24	351	33
Corn, barley, feterita, Kaffir corn, milo maize, oats, alfalfa meal	40,000 (1)	7	9	10	12½	13½	15½	16	17	19	351	29½
(Item 6320) (Intrastate only)	(2)	10	12	13	15½	16½	18½	19	20	22	351	29½
Hay	17,000 (1)	9	11	12	15	17	19	20	21	23	351	35
(Item 6320) (Intrastate only)	(2)	12	14	15	18	20	22	23	24	26	351	35
Broom Corn	18,000 (1)	20½	26	29½	36½	43	48½	53½	55	61	351	71½
(Item 1585)	(2)	26	32½	35	43	48½	53½	57½	59½	65½	351	76
Cactus plants	30,000 (1)	6½	8½	9	11	12	14	15½	17	19½	476	28
(Item 1595)	(2)	8½	11	11½	13½	14½	16	17½	19½	22	476	30½
Glass fruit jars, bottles and jelly glasses	30,000 (1)	11	12	14	17	20½	23	25	27½	30½	651	55
(Item 1610-A)	(2)	14	15½	17	20½	23	26	28	30½	33½	651	55
Iron, angle, band, bar, roofing, etc.	30,000 (1)	11	14	16	19½	22½	26	29½	32½	36	476	48½
(Item 1631)	(2)	14	17	19	22½	25½	29½	32½	35	38½	401	48½
Iron, structural, etc.	30,000 (1)	11	14½	17	21	24½	28	32½	35	39½	351	48½
(Item 1635)	(2)	14	17½	20½	24½	27½	31	35	38½	43	251	48½
Junk	30,000 (1)	5½	7	8	10½	12	14½	16	17½	20½	551	30½
(Item 1653)	(2)	7	8½	10	12	13½	16	17½	19½	22½	551	30½
Junk and scrap iron, mixed carloads	50,000 (1)	8	9	11	12	12½	14½	16	17½	20½	551	30½
(Item 1657)	(2)	11	12	14	15½	16	17	17½	19½	22½	551	30½
Horses and mules	23,000 (1)	15½	17½	20½	24½	27½	29½	30½	33½	35	751	50½
(Item 1680-C) (Intrastate only)	(2)	19	21	24	28	30½	32½	33½	35	38½	751	50½
Cattle, beef, and calves, hogs, sheep and goats in double deck cars	22,000 (1)	11	12½	15½	19	21	24	25	27½	30½	1471	77
(Item 1680-C)	(2)	14½	17	19	23	25	27½	29½	31	34	1471	77
Cattle, stocker	20,000 (1)	8½	10	11½	14	16	17½	19	20½	23	1471	57½
(Item 1680-C)	(2)	11	12½	14	17½	19	20½	22	23	25½	1471	57½
Calves or hogs in single deck cars	16,000 (1)	12½	14½	17½	22	24½	27½	28½	31½	35	1471	88
(Item 1680-C)	(2)	17	19½	22	26½	28½	31½	33½	36	38½	1471	88
Calves, stocker, in single deck car	16,000 (1)	10	11	13½	16	18½	20½	22	24	26½	1471	66½
(Item 1680-C)	(2)	12½	14½	16	20½	22	24	25	26½	29½	1471	66½
Sheep or goats in single deck cars	12,000 (1)	14	16	19	24	26½	29½	31	34	38½	1471	96
(Item 1680-C)	(2)	18½	21	24	29½	31	34	36½	38½	43	1471	96
Molasses, blackstrap, and blackstrap molasses and rice bran, mixed carloads	36,000 (1)	8	11	12	15½	17	19	20½	22	24	401	29½
(Item 1720)	(2)	9	12	14	17	18½	20½	21	24	25	351	29½
Nuts	40,000 (1)	5½	8	8	9	11	12	14	15½	18½	301	24½
(Item 1733)	(2)	8	9	9	11	12	14	15½	17	20½	276	34½
Pecans in the shell	30,000 (1)	22	26	29½	36	42	48	54	59½	65½	476	91½
(Item 1737)	(2)	29½	32½	37	43	48½	55	61	66	72½	501	97
Petroleum Products	26,000 (1)	18½	24	26½	31	35	39½	39½	39½	39½	121	39½
(Item 1740-A)	(2)	24½	29½	31½	36	39½	39½	39½	39½	39½	91	39½
Stone, road and gravel	50,000 (1)	3	3½	4	5	5½	6½	7	7	8	601	16
(Item 1750-A)	(2)	3½	4	5	5½	6½	7	7	8	9	601	16
Cotton	Any Quantity	28	35	43	55	64½	68	71½	74½	80	211	80

Exhibit No.....

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Ma... ...mum Rat...
Animal manure, and gypsum rock...	50,000 (1)	2½	3	3½	5	5½	6½	7	7	8½	601	3
(Item 1780-A)	(2)	3	4	4	5½	6½	7	8	8½	10	601	3
Folding fruit and vegetable crates, fruit and vegetable packages, Nsted	30,000 (1)	11	15½	17	21	23	24½	26	26½	29½	201	2
(Item 1800)	(2)	14	18½	20½	24½	26	27½	29½	29½	29½	126	2
Locomotive, steam, loaded on cars...	60,000 (1)	15½	15½	15½	19	19	23	23	23	26½	901	6
(Item 1875-A)	(2)	19	19	19	23	23	26½	26½	26½	30½	901	6
Canned goods, canned milk, pickles, table sauces, salad dressing, olives and capers...	30,000 (1)	11	15½	20½	27½	33½	38½	41½	45½	48½	251	2
(Item 2305)	(2)	17	21	26	33½	39½	44½	45½	48	49	226	2
Fence posts, wooden...	30,000 (1)	5½	8½	6½	8	8½	10	11	11½	12½	731	3
(Item 2530-A)	(2)	10	10	11	12	12½	14½	15½	16	17½	601	3
Fertilizers...	30,000 (1)	6	7	8	9½	11½	13	14½	16	18	801	5
(Item 2571-B)	(2)	7	8	9	10½	12½	14	15½	17	19	801	5
Fertilizers, l. c. l....	(1)	13½	18	21	25½	31	34½	37½	41½	46	876	5
(Item 2571-B)	(2)	17½	22	25	29½	34½	38½	41½	45	49½	876	5
Dry hides...	12,000 (1)	11	15½	17½	24½	27½	32½	35	39½	45	251	6
(Item 2580)	(2)	12½	17½	20½	26½	30½	35	38½	41½	46½	251	6
Green hides...	(@26,000(1)	8½	12	14	17½	20½	23	25	27½	30½	251	3
(Item 2580)	(2)	10	14	15½	19	21	24½	26½	29½	32½	251	3
Dry hides, l. c. l....	(1)	14	20½	23	32½	38½	47½	52	56½	62½	351	8
(Item 2580)	(2)	18½	24½	27½	36½	41½	50½	55	59½	65½	351	8
Green hides, l. c. l....	(1)	11½	16	18½	25	29½	36½	39½	44½	50½	351	5
(Item 2580)	(2)	15½	20½	22	29½	33½	39½	43	47½	52	351	5
Rails and cross ties, iron...	44,800 (1)	5	6½	7	8	9	11	12	13½	15½	451	2
(Item 2630-A)	(2)	7	8	9	10	11	12½	14	15½	17	426	2
Track fastenings, iron...	40,000 (1)	5½	7	8½	9	10½	12½	14	14½	17	451	3
(Item 2630-A)	(2)	8	8½	10	11	12	14½	16	17	19	426	3
Scrap iron...	50,000 (1)	8	9	11	12	12½	14	14½	15½	17	601	3
(Item 2650)	(2)	11	12	14	15½	16	17	17	17½	18½	601	3
Lime...	24,000 (1)	9	10½	11	12½	14	15½	16	17½	20½	701	3
(Item 2670)	(2)	14	14	14½	16	17½	19	20½	21	22½	701	3
Lime, cement and plaster, mixed carload...	24,000 (1)	10	11	11½	13½	14½	16	17	18½	20½	701	3
(Item 2670)	(2)	14½	14½	15½	17	18½	19½	20½	22	23	701	3
Petroleum, crude and fuel...	38,000 (1)	9	10	11	13	13½	14	15½	16	17½	426	5
(Item 2700)	(2)	11	12	13	15	15½	16	17½	18	19½	401	5
Fuel distillates...	38,000 (1)	12	13	14	16	16½	17	18½	19	20½	426	7
(Item 2700)	(2)	14	15	16	18	18½	19	20½	21	22½	401	7
Creosote oil...	38,000 (1)	11½	12½	14	15½	16	17	17½	18½	20½	426	5
(Item 2700)	(2)	14	15½	16	17½	18½	19	20½	20½	22	401	5
Salt...	45,000 (1)	9	11	12	15½	17	20½	21	23	24½	251	2
(Item 2730-D)	(2)	11	12	14	17	18½	21	23	24½	26	221	2
Fresh meats...	21,000 (1)	16	17½	22½	28	32½	35	38½	41½	47½	976	12
(Item 2785)	(2)	19½	21	26	31½	36	38½	41½	45	51	976	12
Packing house products...	30,000 (1)	12½	14½	19	24	28½	29½	32½	34½	39½	976	10
(Item 2785)	(2)	16	18½	22½	27½	30	33	36	38½	43	976	10
Wool and mohair (in sacks or bales)...	20,000 (1)	21	29½	38½	47½	56½	64	71½	79	90	426	18
(Item 2810)	(2)	21	29½	38½	47½	56½	64	71½	79	90	426	18
Cotton...	Any Quantity	28	36	43	55	64½	66	71½	74½	80	211	8

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
Wool and mohair (in machine pressed bales).....	22,500 (1)	20½	27½	35	43½	52	55	59½	64	74½	426	91½
(Item 2510)	(2)	20½	27½	...	43½	52	55	59½	64	74½	426	91½
Sulphuric acid in glass, also muriatic acid in glass, in straight or mixed carload.....	30,000 (1)	9	12	17	21	24½	27½	29½	32½	33½	221	55
(Item 6000-A) (Intrastate only)	(2)	12	15½	20½	24½	27½	30½	32½	35	35	173	55
Cement or ① calcamine.....	34,000 (1)	10	11	11½	14	16	17	19½	22	27½	251	30½
(Item 3400)	(2)	12	13½	14	16	18½	19½	22	24½	29½	251	30½
Soft coal.....	60,000 (1)	5½	6½	6½	7	8½	9	10	11	12	791	29½
(Item 3425)	(2)	7	7	7	8½	9	10½	11	11½	12½	771	29½
Anthracite coal.....	60,000 (1)	6½	6½	7	8	8½	10	10½	11½	12½	791	31½
(Item 3426)	(2)	7	7	8	9	10	11	11½	12	14	791	32½
Slack coal.....	60,000 (1)	5	5	5½	6½	7	8½	9	10	11	791	28½
(Item 3425)	(2)	5½	6½	6½	7	8½	9	10	11	12	791	29½
Lignite and lignite briquettes (Intrastate only) Rate per ton of 2,000 pounds.....	Car (1)	44	53	61	80	91	105	115	129	149	701	340
(Item 3437)	Cap'ty (2)	67	76	84	103	114	128	138	152	172	701	365
Stoneware ①.....	24,000 (1)	12	17½	20½	21	23	24½	26	27½	30½	200	30½
(Item 3455)	(2)	15½	20½	23	24½	26	27½	29½	29½	30½	176	30½
Jail material, iron or steel, braces and cast or steel stair material, also cell weights.....	30,000 (1)	10	12½	14½	19½	22½	25½	28½	30½	35	381	51
(Item 3490)	(2)	12½	16	17½	22½	25½	28½	31½	33½	38½	381	51
Kaolin and fullers earth.....	30,000 (1)	3½	5	5	6½	8	9	11	12	14	651	27½
(Item 3535)	(2)	6	7½	7½	9	10½	11½	13½	14½	16½	651	30
Water, mineral or spring.....	24,000 (1)	11	14	15½	20½	23	27½	29½	30½	33½	246	30½
(Item 3545)	(2)	15½	18½	20½	24½	27½	32½	33½	33½	35	221	30½
Rough rice ① and rice polish.....	30,000 (1)	5½	7	8	10	11½	14	15½	17½	20½	241	23
(Item 2560)	(2)	7	9½	9	11½	12½	15½	17	19	21	241	23
Soap and soap powder.....	30,000 (1)	9	14	18½	26	30½	35	38½	43	47½	246	30½
(Item 3615)	(2)	11	15½	20½	27½	32½	36½	39½	44½	48½	246	30½
Sugar and molasses.....	36,000 (1)	13½	21	27½	33½	38	42½	45½	48½	50	186	50
(Item 3670-A)	(2)	18½	26	32	38	42½	47	48½	50	50	161	50
Cotton burrs or hulls.....	20,000 (1)	9	11½	12	14½	18	20½	22	24½	26½	201	26½
(Item 6790) (Intrastate only)	(2)	12	14½	15½	17½	19	23	24½	26	26½	191	26½
Soda solution.....	Cap'ty (1)	28	36	40	44½	52½	59½	59½	59½	59½	121	59½
(Item 3735)	of (2)	37	44½	47½	54	59½	59½	59½	59½	59½	91	59½
	Tank Car											
Coke, including petroleum coke.....	60,000 (1)	6½	6½	7	7	9	10	10½	11½	12½	781	30½
(Item 2720) (Intrastate only)	(2)	7	7	7	9	10	11	11½	12	13½	781	31
Bag, burlap, cotton, clayed and gunny.....	30,000 (1)	10	13	14½	17½	20	23½	26½	30	34	301	48
(Item 6510) (Intrastate only)	(2)	13	16½	18	21	24	27	30	33	35½	476	48
Cottonseed for planting, l. c. l.....	(1)	12	15½	17	18½	20½	23	24½	26	29½	301	48½
(Item 6590) (Intrastate only)	(2)	Combination rates up to 300 miles, not to exceed single line rates for that and greater distances.										
Flour and articles taking same rates, l. c. l. (Intrastate only).....	(1)	24½	29½	33½	40	43½	51	52½	54½	57	201	57
(Item 6815)	(2)	32½	36½	41½	48	52½	64½	56½	59	61	201	61
Cotton.....	Any Quantity	26	35	43	55	64½	68	71½	74½	80	211	80

Exhibit No.....

COMMODITIES	Minimum Weight Lbs.		For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	M
Wheat and articles taking same rates, l. c. l. (Intrastate only).....		(1)	24½	29½	33½	40	45	47½	48½	51	53	201	
(Item 6815)		(2)	32½	36½	41½	[illegible]	48½	50½	51	52½	53	191	
Hay and articles taking hay rates, l. c. l. (Intrastate only).....		(1)	24½	29½	33½	40	43	46½	48½	51	53½	201	
(Item 6815)		(2)	32½	36½	41½	44½	45½	50	51	52½	53½	191	
Ice (Intrastate only).....	36,000	(1)	6½	7	8	9	11	11½	12½	14	15½	301	
(Item 6650)		(2)	9	10	11	12	14	14½	15½	16	17	261	
Locomotives, second-hand.....	60,000	(1)	8	8	8	10	10	11½	11½	11½	13½	901	
(Item 6700-D) (Intrastate only)		(2)	10	10	10	11½	11½	13½	13½	13½	15½	901	
Sulphur, crude, (not ground or refined) (Item 6870) (Intrastate only)	40,000	(1)	5½	8	8	9	11	12	14	15½	18½	301	
		(2)	8	9	9	11	12	14	15½	17	20½	276	
Sulphur, ground, refined, (not ground) inoculated (Intrastate only)....	40,000	(1)	6½	9½	9½	11	13	14½	17	18½	22	301	
(Item 6870)		(2)	9½	11	11	13	14½	17	18½	20½	24½	276	
Sulphur, refined, (not refined), ground and inoculated, refined, l. c. l....		(1)	10	14½	14½	16½	19½	22	25½	28	33	301	
(Item 6870) (Intrastate only)		(2)	14½	16½	16½	19½	22	25½	28	31	37	276	
Products of paper mills.....	24,000	(1)	11½	15½	16½	20	23½	27	30	33½	37	476	
(Item 6775) (Intrastate only)		(2)	16	19½	21	25	28	31½	35	38	41½	501	
Packing house products, l. c. l.....		(1)	17	20½	24½	20½	35	38½	41½	45½	52	731	
(Item 6781) (Intrastate only)		(2)	20½	24	28	34	38½	42	45	49	55½	731	
Fresh meat, l. c. l. (Intrastate only)		(1)	23	27½	33½	43	48½	53½	57½	62½	71½	731	
(Item 6781)		(2)	26½	31	37	46½	52	57	61	66	76	731	
Rough or seed rice, l. c. l.....		(1)	12	13½	14½	16½	18	20½	22	24	27	241	
(Item 6790) (Intrastate only)		(2)	13½	15	15½	18	19	22	23½	25½	27½	241	
Silica, cement (Intrastate only).....	50,000	(1)	3	3½	3½	4	5	5½	6½	7	8	481	
(Item 6800)		(2)	4	5	5	5½	6½	7	7	8	9	461	
Rough stone (Intrastate only).....	50,000	(1)	5	5½	5½	6½	6½	7	7	8	8½	481	
(Item 6800)		(2)	5½	6½	6½	7	7	8	8½	9	10	301	
Clay furnace, fire brick, fire clay....		(1)	28	32½	35	38½	41½	44½	47½	50½	53½	200	
Tiling, l. c. l. (Intrastate only)...		(2)	38½	45½	50½	53½	56½	59½	62½	65½	69	200	
(Item 6825-B)													
Sugar cane (Intrastate only).....	30,000	(1)	2½	2½	3	4	5	5½	6½	7	8	201	
(Item 6900)		(2)	3½	3½	4	5	5½	6½	7	7	8	201	
Turpentine (Intrastate only).....	30,000	(1)	11	12½	16	17½	19	21	22	23	24½	251	
(Item 6900)		(2)	12	14½	17½	19	20½	23	24	24½	25	251	
Rosin (Intrastate only).....	36,000	(1)	7	11	12	14	15½	16	17	17½	19	251	
(Item 6900)		(2)	8½	12	14	15½	17	17½	18½	19	20½	226	
Wood and tan bark—rate per cord..	14	(1)	99	114½	121½	167	190½	227½	243	258½	288½	801	
(Item 6050-A) (Intrastate only)	Cords	(2)	152	167	175	197½	213	251	266	281½	312	801	
Agricultural implements (not hand)..	24,000	(1)	20½	25	28	35	41½	46½	53½	57½	64	241	
(Item 2000)		(2)	26	31	34	41½	47½	[illegible]	50½	84	69	201	
Agricultural implements (hand).....	24,000	(1)	29½	33½	38½	47½	55	62½	70½	78	85½	301	
(Item 2005)		(2)	38½	43	48	56½	64	71½	79½	87	96	241	
Automobile bodies, freight, K. D....	24,000	(1)	20½	25	28	35	41½	46½	53½	57½	64	241	
(Item 2008)		(2)	26	31	34	41½	47½	52	59½	64	69	201	
Barytes.....	30,000	(1)	14	17	19	24	27½	31	35	38½	41½	191	
(Item 2018)		(2)	18½	21	24	28	32½	36	39½	41½	41½	151	
Beverages.....	20,000	(1)	14	17	19	24	27½	31	35	38½	38½	151	
(Item 2022)		(2)	18½	21	24	28	32½	36	38½	38½	38½	126	
Cotton.....	Any Quantity		28	35	43	53	64½	68	71½	74½	80	211	

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 25 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
...ks, steel tank or tank tower ...erials	36,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	211	59½
(Item 2030)	(2)	24½	29½	33	38½	43	49	55	59½	59½	171	59½
...ts	9,000 (1)	24½	29½	33½	40	47½	54	61	67	73	211	73
(Item 2035)	(2)	32½	36½	41½	48	55	61	69	73	73	171	73
...ment plaster	40,000 (1)	9	12	14	17	20½	23	24½	24½	24½	136	24½
(Item 2040)	(2)	12	15½	17	20½	23	24½	24½	24½	24½	111	24½
...ment	24,000 (1)	12	14½	17	20½	24	26½	30½	33½	35	191	35
(Item 2043)	(2)	15½	17½	20½	23	26½	29½	33½	35	35	161	35
...ets, corrugated metal, K. D.	36,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	276	67
(Item 2050)	(2)	24½	29½	33	3 ½	43	49	55	59½	65½	221	67
...ol IV	40,000 (1)	12	14½	17	20½	24	26½	30½	33½	37	241	39½
(Item 2052)	(2)	15½	17½	20½	23	26½	29½	33½	36½	39½	211	39½
...ks, roofed	30,000 (1)	18½	24	26½	32½	37	43	48½	53½	55	181	55①
(Item 2055)	(2)	24½	29½	33	38½	43	49	55	55	55	146	55①
...ks, gum	30,000 (1)	18½	24	26½	32½	37	43	45½	45½	45½	131	45½①
(Item 2056)	(2)	24½	29½	33	38½	43	45½	45½	45½	45½	106	45½
...ton fabrics, l. c. l.	(1)	29½	33½	38½	47½	55	62½	70½	78	85½	351	106
(Item 2058-A)	(2)	38½	43	48	56½	64	71½	79½	87	96	276	106
...kets, latches, plates and knobs, ...ets, nuts and lifts, transom lifts ...d hangers	30,000 (1)	24½	29½	33½	40	47½	54	61	67	73½	276	83½
(Item 2060)	(2)	32½	36½	41½	48	55	61	69	74½	81½	221	83½
...ry goods, boots and shoes, leather ...ods, books, clothing, drugs and ...dicines, toilet preparations, hats ...d caps, herbs, linoleum and oil ...oth, meats, rubber goods, station-...y, toys, umbrellas, notions	24,000 (1)	24½	29½	33½	40	47½	54	61	67	73½	276	83
(Item 2065)	(2)	32½	36½	41½	48	55	61	69	74½	81½	221	83
...ne filers	30,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	276	67
(Item 2068)	(2)	24½	29½	33	38½	43	49	55	59½	65½	221	67
...ial plumbains	30,000 (1)	9	12	14	17	18½	18½	18½	18½	18½	81	18½
(Item 2070-A)	(2)	12	15½	17	18½	18½	18½	18½	18½	18½	56	18½
...ing plate	36,000 (1)	24½	29½	33½	40	47½	54	61	67	73½	276	91½
(Item 2075)	(2)	32½	36½	41½	48	55	61	69	74½	81½	276	91½
...ing, rough rolled	36,000 (1)	18½	24	26½	32½	36½	36½	36½	36½	36½	91	36½
(Item 2080)	(2)	24½	29½	33	36½	36½	36½	36½	36½	36½	66	36½
...ing, window	40,000 (1)	12	14½	17	20½	24	26½	30½	33½	36½	211	36½
(Item 2085)	(2)	15½	17½	20½	23	26½	29½	33½	36½	36½	171	36½
...ng or steel ceiling	36,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	211	59½
(Item 2105)	(2)	24½	29½	33	38½	43	49	55	59½	59½	171	59½
...ng and mule shoes	36,000 (1)	18½	24	26½	32½	37	43	48½	50½	50½	151	50½
(Item 2110)	(2)	24½	29½	33	38½	43	49	50½	50½	50½	126	50½
...ng or steel pipe, and boiler tubes, ...ated pipe, couplings, connec-...rs and fittings	48,000 (1)	18½	24	26½	32½	36½	36½	36½	36½	36½	91	36½
(Item 2125)	(2)	24½	29½	33	36½	36½	36½	36½	36½	36½	66	36½
...ng iron pipe, pipe hangers, coupl-...gs and connections	36,000 (1)	18½	24	26½	32½	36½	36½	36½	36½	36½	91	36½
(Item 2130)	(2)	24½	29½	33	36½	36½	36½	36½	36½	36½	66	36½
...chinery, gin or irrigation	24,000 (1)	20½	25	28	35	41½	46½	53½	57½	64	241	69
(Item 2140)	(2)	26	31	34	41½	47½	52	60½	64	69	201	69
...ton	Any Quantity	28	35	43	55	64½	68	71½	74½	80	211	80

Exhibit No.....

COMMODITIES	Minimum Weight Lbs.	For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
Oil well supplies (Item 2155)	36,000 (1)	20½	25	28	35	41½	46½	53½	57½	64	231	67
	(2)	26	31	34	41½	47½	52	59½	64	67	191	67
Excelsior (Item 2160)	20,000 (1)	14	17	19	24	27½	31	35	38½	43	231	44½
	(2)	18½	21	24	28	32½	36	39½	43	44½	181	44½
Paints and ochre—dry (Item 2175)	36,000 (1)	14	17	19	24	27½	31	35	38½	41½	191	41½
	(2)	18½	21	24	28	32½	36	39½	41½	41½	151	41½
Paints in oil, varnish, leads in oil, putty (Item 2180)	36,000 (1)	18½	24	23½	32½	37	43	48½	53½	59½	211	59½
	(2)	24½	29½	33	38½	43	49	55	59½	59½	171	59½
Paris green—London purple (Item 2183)	36,000 (1)	20½	25	28	35	41½	46½	53½	57½	64	231	67
	(2)	26	31	34	41½	47½	52	59½	64	67	191	67
Pulpboard, strawboard, wallboard, binder board, fibre board, pulpboard or tar board (Item 2185)	40,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	276	67
	(2)	24½	29½	33	38½	43	49	55	59½	65½	221	67
Paper, building or roofing, plain or saturated, roofing or building felt, prepared or composition roofing, roof coating, or covering, (liquid), asbestos roofing, asbestos cement, roofing shells, asphalt shingles (Item 2190-B)	36,000 (1)	14	17	19	24	27½	31	35	36½	36½	151	36½
	(2)	18½	21	24	28	32½	36	36½	36½	36½	126	36½
Wall paper, value not exceeding 10c per pound (Item 2195)	40,000 (1)	24½	29½	33½	40	47½	54	61	67	73½	328	88
	(2)	32½	36½	41½	48	55	61	60	74½	81½	251	88
Peanuts, shelled, unsalted (Item 6462)	30,000 (1)	13.1	16.9	18½	24.4	26.1	32½	35	36½	38½	301	42½
	(2)	16½	20	21.9	22½	31½	35	37½	38½	40	301	42½
Pull rods or sucker rods, and iron sucker rod joints (Item 2210)	40,000 (1)	20½	25	28	35	41½	46½	53½	57½	64	231	67
	(2)	26	31	34	41½	47½	52	59½	64	67	191	67
Rice flour (Item 2217)	24,000 (1)	18½	24	26½	32½	37	43	44½	44½	44½	126	44½
	(2)	24½	29½	33	38½	43	44½	44½	44½	44½	101	44½
Car wheels, axles and trucks, car and locomotive parts, semaphores and track material (Item 3080)	40,000 (1)	12	14½	17	20½	24	26½	30½	33½	33½	171	33½
	(2)	15½	17½	20½	23	26½	29½	33½	33½	33½	146	33½
Sewer pipe, drain tile, vitrified wall coping, clay conduit pipe, concrete pipe, concrete sewer tile and reinforced concrete pipe (Item 2225)	36,000 (1)	9	12	14	17	20½	23	25	27½	30½	231	32½
	(2)	12	15½	17	20½	23	26	28	30½	32½	191	32½
Clay or vitrified conduits, flue lining, hollow building tile, chimney pipe, fire clay and fire brick in mixed carload with articles first above (Item 2225)	30,000 (1)	9	12	14	17	20½	23	25	27½	30½	231	32½
	(2)	12	15½	17	20½	23	26	28	30½	32½	191	32½
Soda ash, sal soda, monohydrate or sesqui carbonate (Intrastate only) (Item 3607)	50,000 (1)	18½	24	26½	32½	37	43	48½	48½	48½	146	48½
	(2)	24½	29½	33	38½	43	48½	48½	48½	48½	121	48½
Soda, chloride of lime, potash, salt cake, saltpetre, bicarbonate of soda, bisulphate of soda, carbonating soda, caustic soda solution, hyposulphite of soda, silicate of soda, sulphate of soda, sulphite of soda (Item 2235)	36,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	241	64
	(2)	24½	29½	33	38½	43	49	55	59½	64	201	64
Starch (Item 2240)	40,000 (1)	18½	24	26½	32½	37	43	48½	53½	59½	231	63½
	(2)	24½	29½	33	38½	43	49	55	59½	62½	191	63½
Cotton	Any Quantity	28	35	43	55	64½	68	71½	74½	80	211	80

COMMODITIES	Minimum Weight Lbs.		For 20 Miles	For 35 Miles	For 50 Miles	For 75 Miles	For 100 Miles	For 125 Miles	For 150 Miles	For 175 Miles	For 211 Miles	Distance at which Maximum Rate is Reached	Maximum Rate
Stone and granite, figured or lettered.	36,000	(1)	14	17	19	24	27½	31	35	38½	43	201	43
(Item 2243)		(2)	18½	21	24	28	32½	36	39½	43	43	171	43
Stove pipe iron and stove pipe, seams open	36,000	(1)	18½	24	26½	32½	37	43	48½	53½	59½	276	67
(Item 2245)		(2)	24½	29½	33	38½	43	49	55	59½	65½	221	67
Tin and taps	24,000	(1)	24½	29½	33½	40	47½	54	61	67	73½	278	83½
(Item 2255)		(2)	32½	36½	41½	48	55	61	69	74½	81½	221	83½
Vinegar	30,000	(1)	12	14½	17	20½	24	26½	30½	33½	37	351	45½
(Item 2258)		(2)	15½	17½	20½	23	26½	29½	33½	36½	40	301	45½
Vans, buggy and auto bodies, seats, cut backs, wheels, gears, bows, pole and shafts, in the white	30,000	(1)	20½	25	28	35	41½	46½	53½	57½	64	301	74½
(Item 2265)		(2)	26	31	34	41½	47½	52	59½	64	70	241	74½
Vans wood, plow beams, and handles, bent felloes, in the rough, sawed to dimension	36,000	(1)	15½	20½	22	26½	31	36	40	44½	45½	181	45½
(Item 2280-A)		(2)	21	26	28	33	37	42	45½	45½	45½	141	45½
Vans material, wood, in the rough or partly or wholly finished, not sawed	30,000	(1)	20½	25	28	35	41½	46½	50½	50½	50½	136	50½
(Item 2270)		(2)	26	31	34	41½	47½	50½	50½	50½	50½	111	50½
Petroleum asphalt	30,000	(1)	12	14½	17	20½	24	26½	30½	30½	30½	148	30½
(Item 3000-D)		(2)	15½	17½	20½	23	26½	29½	30½	30½	30½	126	30½
Cartridges, paper or metallic, shells loaded, small arms	30,000	(1)	24½	29½	33½	40	47½	54	61	67	73½	221	76
(Item 3010)		(2)	32½	36½	41½	48	55	61	69	74½	76	181	76
Paper bags and wrapping paper	36,000	(1)	18½	24	26½	32½	37	43	48½	53½	59½	276	67
(Item 3105) (Intrastate only)		(2)	24½	29½	33	38½	43	49	55	59½	65½	221	67
Paper, news print (Intrastate only)	36,000	(1)	18½	24	26½	32½	36	36	36	36	36	91	36
(Item 7125)		(2)	24½	29½	33	36	36	36	36	36	36	61	36
Binder twine (Intrastate only)	24,000	(1)	20½	25	28	35	41½	46½	50	50	50	136	50
(Item 7130)		(2)	26	31	34	41½	47½	50	50	50	50	111	50
Tin and sheet iron articles	18,000	(1)	24½	29½	33½	40	47½	54	61	67	73½	221	74½
(Item 7135) (Intrastate only)		(2)	32½	36½	41½	48	55	61	69	74½	74½	171	74½
Chocolate raw material, chocolate coatings and liquors	30,000	(1)	38	41½	47½	50½	50½	50½	50½	50½	50½	56	50½
(Item 7140) (Intrastate only)		(2)	45½	50½	50½	50½	50½	50½	50½	50½	50½	26	50½
Wire and nails (Intrastate only)	30,000	(1)	18½	24	26½	32½	37	38½	38½	38½	38½	101	38½
(Item 7145)		(2)	24½	29½	33	38½	38½	38½	38½	38½	38½	71	38½
Baskets and hampers, fruit, melon and vegetable (Intrastate only)	24,000	(1)	15½	20½	22	26½	31	36	38½	38½	38½	131	38½
(Item 7150)		(2)	21	26	28	33	37	38½	38½	38½	38½	101	38½
Baskets, fruit, melon or vegetable	14,000	(1)	15½	20½	22	26½	31	36	38½	38½	38½	131	38½
(Item 7150) (Intrastate only)		(2)	21	26	28	33	37	38½	38½	38½	38½	101	38½
Common table glassware, value $5.00 per 100 pounds (Intrastate only)	24,000	(1)	24½	29½	33½	40	47½	54	61	65½	65½	171	65½
(Item 7155)		(2)	32½	36½	41½	48	55	61	65½	65½	65½	136	65½
Cotton	Any Quantity		28	35	43	55	64½	68	71½	74½	80	211	80

Rates are in cents per 100 pounds unless otherwise specified.
(1) Single line rates.
(2) Joint line rates.
(3) Applicable on Texas Intrastate Traffic only.
(4) Maximum rate on sum of the commodities on Texas Intrastate Traffic only is 48½ cents.
(5) Joint rates as shown applicable on Texas Intrastate Traffic only.

[fol. 59]

Exhibit A-104

Statement Showing Number of Cars of Concentrated and Transit Cotton forwarded from the Compress Points Shown Below to the Texas Ports During the Months of September, October, and November, 1924, Average Car Loading, Number of Consignees, Number of Cars Handled at Mixed Platforms at Destination, and the Number of Cars Delivered Direct to Consignees

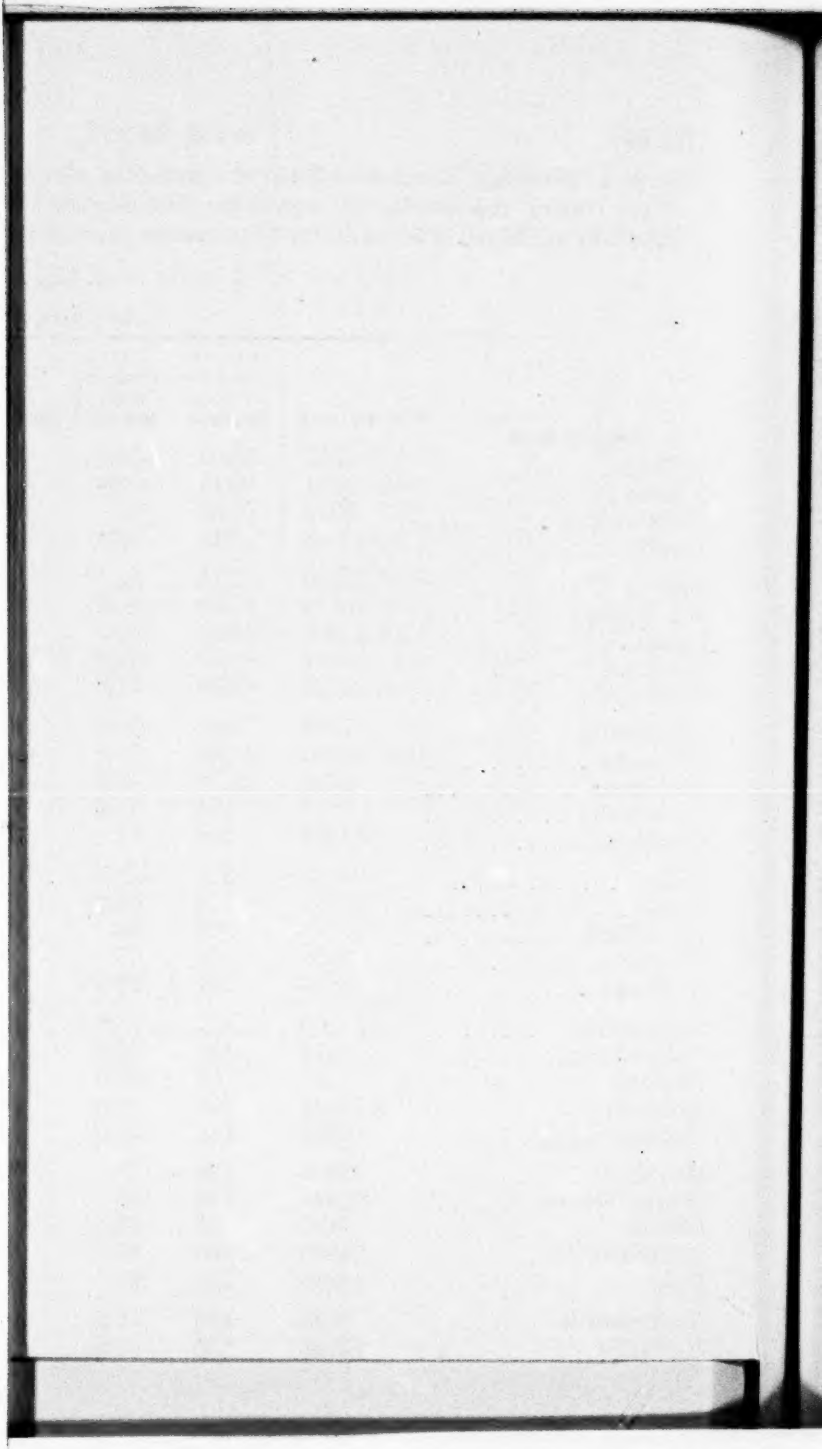
I. C. C. Docket Nos. 14940, 13991 and 11965

	Concentrated cotton						Transit cotton					
Compress point	No. bales	No. cars	Average bales per car	No. consignees	No. cars handled at mixed platform	No. cars delivered direct to consignee	No. bales	No. cars	Average bales per car	No. consignees	No. cars handled at mixed platform	No. cars delivered direct to consignee
Abilene	6785	103	66#	129	19	84	12483	207	60	249	83	124
Athens	8571	115	74#	135	17	98	4593	70	65#	141	51	19
Brownwood	5994	80	75	102	20	60	9291	139	67	252	84	55
Brady	15208	215	70#	246	25	190	5451	89	61#	165	47	42
Bryan	22590	313	72	319	5	308	1462	26	56	33	7	19
Big Spring	10674	149	71#	165	15	134	1822	33	55	51	19	14
Cuero	25096	338	74	390	47	291	5026	71	70#	90	27	44
Cameron	23667	345	65#	351	6	339	15378	240	64	278	33	207
Cleburne	20426	298	68#	412	100	198	11542	193	59#	325	106	87
Clarksville	21308	265	80#	291	24	241	3550	50	71	62	7	43
Colorado	10910	166	65#	155	7	159	6437	113	56#	182	58	55
Corsicana	4676	50	93#	58	8	42	9398	139	67#	263	76	63
Chillicothe	6978	114	61#	123	9	105	1757	34	51#	54	18	16
Childress	14398	200	71	232	27	173	4229	66	62#	96	29	37
Dallas	28068	327	85#	349	25	302	18600	260	70	378	103	157
Ennis	10264	154	66#	164	10	144	4560	70	65	92	20	50
Ft. Worth	17470	203	86	220	17	186	18111	255	71	461	141	114
Gilmer	3856	61	63	72	7	54	134	2	67	2	0	2
Giddings	6954	111	62#	122	1	110	848	16	53	16	0	16
Gainesville	35260	471	75#	486	13	458	8229	128	64#	146	15	113
Gatesville	9618	158	60#	200	35	123	11735	199	57	308	87	112
Garland	5485	79	69#	86	7	72	4384	65	67#	84	18	47
Greenville	36841	556	66#	641	80	476	71483	1076	66#	1464	382	694
Hubbard	6861	115	59#	125	10	105	2008	45	44#	63	18	27
Hearne	22625	286	79	300	14	272	9161	128	71	257	105	23
Honey Grove	22078	324	68	362	38	286	5366	97	55#	150	44	53
Hamlin	6107	96	63#	119	17	79	19757	336	58	497	159	177
Hillsboro	22800	350	65	393	40	310	17092	267	64	430	152	115
Italy	13345	205	65	223	15	190	14362	214	67#	427	156	58
Jacksonville	8824	124	70#	122	4	120	11764	189	62	287	82	107
Kennedy	15750	230	67#	244	14	216	15359	249	61#	300	60	189
Kaufman	8986	122	73#	143	17	105	8523	126	67#	202	64	62
Longview	9749	130	75	147	14	116	3708	56	66#	86	29	27
Paris	33247	460	72#	518	58	402	12978	187	69#	273	82	105
Quanah	7446	98	76#	133	23	75	15815	227	69#	415	152	75
Rule	2104	90	70	39	6	24	1079	151	71#	272	90	61
Sherman	[illegible]											

FOLD OUT IS TOO LARGE TO BE FILMED

...1 and 11965

Compress point	No. bales	No. cars	Average bales per car	No. consignees	handled at mixed platform	delivered direct to consignee	Transit cotton: No. bales	No. cars	Average bales per car	No. consignees	No. cars handled at mixed platform	No. cars delivered direct to consignee
Abilene	6785	103	66#	129	19	84	12483	207	60	249	83	124
Athens	8571	115	74#	135	17	98	4593	70	65#	141	51	19
Brownwood	5994	80	75	102	20	60	9291	139	67	252	84	55
Brady	15208	215	70#	246	25	190	5451	89	61#	165	47	42
Bryan	22590	313	72	319	5	308	1462	26	56	33	7	19
Big Spring	10674	149	71#	165	15	134	1822	33	55	51	19	14
Cuero	25096	338	74	390	47	291	5026	71	70#	90	27	44
Cameron	23667	345	65#	351	6	339	15378	240	64	278	33	207
Cleburne	20426	298	68#	412	100	198	11542	193	59#	325	106	87
Clarksville	21308	265	80#	291	24	241	3550	50	71	62	7	43
Colorado	10910	166	65#	155	7	159	6437	113	56#	182	58	55
Corsicana	4676	50	93#	58	8	42	9398	139	67#	263	76	63
Chillicothe	6978	114	61#	123	9	105	1757	34	51#	54	18	16
Childress	14398	200	71	232	27	173	4229	66	62#	96	29	37
Dallas	28068	327	85#	349	25	302	18600	260	70	378	103	157
Ennis	10264	154	66#	164	10	144	4560	70	65	92	20	50
Ft. Worth	17470	203	86	220	17	186	18111	255	71	461	141	114
Gilmer	3856	61	63	72	7	54	134	2	67	2	0	2
Giddings	6954	111	62#	122	1	110	848	16	53	16	0	16
Gainesville	35260	471	75#	486	13	458	8229	128	64#	146	15	113
Gatesville	9618	158	60#	200	35	123	11735	199	57	308	87	112
Garland	5485	79	69#	86	7	72	4384	65	67#	84	18	47
Greenville	36841	556	66#	641	80	476	71483	1076	66#	1464	382	694
Hubbard	6861	115	59#	125	10	105	2008	45	44#	63	18	27
Hearne	22625	286	79	300	14	272	9161	128	71	257	105	23
Honey Grove	22078	324	68	362	38	286	5366	97	55#	150	44	53
Hamlin	6107	96	63#	119	17	79	19757	336	58	497	159	177
Hillsboro	22800	350	65	393	40	310	17092	267	64	430	152	115
Italy	13345	205	65	223	15	190	14362	214	67#	427	156	58
Jacksonville	8824	124	70#	122	4	120	11764	189	62	287	82	107
Kennedy	15750	230	67#	244	14	216	15359	249	61#	300	60	189
Kaufman	8986	122	73#	143	17	105	8523	126	67#	202	64	62
Longview	9749	130	75	147	14	116	3708	56	66#	86	29	27
Paris	33247	460	72#	518	58	402	12978	187	69#	273	82	105
Quanah	7446	98	76#	133	23	75	15815	227	69#	415	152	75
Rule	2104	90	70	39	6	24	1079	151	71#	272	90	61
Sherman	7293	126	57#	136	10	116	22620	408	55#	508	106	302
Stamford	11032	168	65	204	36	132	21944	361	60#	566	177	184
Sulphur Spgs.	12904	194	66#	209	15	179	5677	94	60	133	39	55
Waco.	33626	440	76#	473	29	411	25036	341	73	484	129	212
Total	595874	9269	72#	9929	884	7485						



[fol. 60] **Exhibit No. A-105, Pecote**

Record of Flat Cotton Moving Into Interior Compresses During Months of September, October, and November, 1924

Compresses	Total bales	Total cars	Average per car
Athens	8,817	342	25
Abilene	37,739	1,717	22
Brownwood	51,660	1,672	30
Brady	16,373	686	23
Bryan	13,446	488	27
Big Springs	3,527	141	25
Corsicana	25,223	960	26
Childress	5,816	225	25
Cuero	22,571	690	32
Colorado	10,576	381	27
Dallas	78,630	2,757	28
De Leon	14,812	609	24
Dublin	3,562	133	26
Ennis	5,422	225	24
Ft. Worth	96,632	3,315	23
Greenville	135,972	4,470	30
Gainesville	74,632	2,603	28
Gatesville	16,309	558	29
Giddings	13,858	567	24
Hubbard	6,981	237	25
Hamlin	22,078	913	24
Honey Grove	17,200	648	26
Hearne	28,168	977	28
Hillsboro	38,934	1,448	26
Italy	31,160	1,046	30
Jacksonville	16,939	605	28
Kaufman	12,508	483	25
Longview	9,867	372	26
Paris	44,342	1,659	27
Quanah	23,417	790	30
Rule	18,457	669	27
Stamford	42,706	1,404	30
Sulphur Springs	17,661	715	24

Compresses	Total bales	Total cars	Average per car
Sherman	27,924	1,043	26
Wichita Falls	46,602	1,746	26
Waco	47,037	1,747	26 plus
Total	1,027,553	37,998	27
Average bales per car			27

(Here follows Exhibit No. A-106, marked side folio page 61)

[fol. 61]

Exhibit

I. C.

Rates on Cotton to Liverpool, England, to and Throu

From		Rate to port, shipside delivery			Ocean
		To New Orleans	To Savannah	Difference in favor N. O.	From N Orlean
Memphis,	Tenn....	81½	93	11½	65
West Memphis,	Ark.....	81½	99	17½	65
Earle,	"	87	99½	12½	65
Forrest City,	"	92	100½	8½	65
Blytheville,	"	92	100½	8½	65
Jonesboro,	"	92	100½	8½	65
Hoxie,	"	92	100½	8½	65
Newport,	"	92	100½	8½	65
Batesville,	"	97	102	5	65
Cotter,	"	97	102	5	65
Little Rock,,	"	92	102	10	65
Pine Bluff,	"	92	102	10	65
Arkadelphia,	"	92	102	10	65
Camden,	"	92	102	10	65
Eldorado,	"	92	102	10	65
Merrillton,	"	98½	107	8½	65
Ft. Smith,	"	101½	112	10½	65

Tariffs:

Glenn's Port Cotton Tariff 15-A I. C. C. A-525 (From Me
Mo. P. R. R. Tariff 215-L I. C. C. A-6572.
Cri. & P. R. R. Tariff 25600-M I. C. C. C-11518.
Frisco Ry. Tariff 4-V I. C. C. 8605.

NOTE.—Based on value of 20 cents per lb. which is $100.00
not included in above computation. Insurance rate is from Ne
valuation $100.00 per bale this is difference of 5 cents per bale o

(a) Cotton moving on through export bills of lading fro
11 cents under Gulf ports. This 11 cents' differential applies w
in Memphis territory.

New Orleans, La., June 1st, 1926.

*Rates shown via New Orleans include one cent (1¢) added to cover diffe

Exhibit No. A-106, Witness Mitchell

I. C. C. Dockets 13991, 14940

on Cotton to Liverpool, England, to and Through New Orleans, La., versus Savannah, Ga., in Cents per 100 Pounds

	Rate to port, shipside delivery			Ocean rate from port to Liverpool, England			Difference in insurance costs in favor Savannah (Note)	Total through			
										Difference	
	To New Orleans	To Savannah	Difference in favor N. O.	From New Orleans	From Savannah	Difference in favor Savannah		*Via New Orleans	Via Savannah	In favor of New Orleans	In favor Savannah
Tenn....	81½	93	11½	65	54	(a) 11	.01	147½	147	...	½
, Ark.....	81½	99	17½	65	57½	7½	.01	147½	156½	9	...
"	87	99½	12½	65	57½	7½	.01	153	157	4	...
"	92	100½	8½	65	57½	7½	.01	158	158	...	...
"	92	100½	8½	65	57½	7½	.01	158	158	...	...
"	92	100½	8½	65	57½	7½	.01	158	158	...	...
"	92	100½	8½	65	57½	7½	.01	158	158	...	...
"	92	100½	8½	65	57½	7½	.01	158	158	...	...
"	97	102	5	65	57½	7½	.01	163	159½	...	3½
"	97	102	5	65	57½	7½	.01	163	159½	...	3½
"	92	102	10	65	57½	7½	.01	158	159½	1½	...
"	92	102	10	65	57½	7½	.01	158	159½	1½	...
"	92	102	10	65	57½	7½	.01	158	159½	1½	...
"	92	102	10	65	57½	7½	.01	158	159½	1½	...
"	92	102	10	65	57½	7½	.01	158	159½	1½	...
"	98½	107	8½	65	57½	7½	.01	164½	164½	...	...
"	101½	112	10½	65	57½	7½	.01	167½	169½	2	...

riffs:

Port Cotton Tariff 15-A I. C. C. A-525 (From Memphis).
R. R. Tariff 215-L I. C. C. A-6572.
P. R. R. Tariff 25600-M I. C. C. C-11518.
Ry. Tariff 4-V I. C. C. 8605.

—Based on value of 20 cents per lb. which is $100.00 per bale. All shippers insure for 10% over actual market value but this is in above computation. Insurance rate is from New Orleans 72.5 cents and from Savannah 67.5 cents per $100.00 valuation. At 0.00 per bale this is difference of 5 cents per bale or 1 cent per 100 lbs. in favor Savannah (Based on 500 lbs. per bale).

tton moving on through export bills of lading from Memphis is accord- rates from South Atlantic ports to all European ports r Gulf ports. This 11 cents' differential applies whether cotton originates Memphis proper or is concentrated there from points territory.

leans, La., June 1st, 1926.

own via New Orleans include one cent (1¢) added to cover difference in insurance New Orleans versus Savannah as shown in preceding column.

[fol. 62]

Exhibit No. A-107, Witness Lackenberg

ANALYSIS OF DELIVERIES COTTON FROM THE PUBLIC COTTON WAREHOUSE, NEW ORLEANS, LA.

Entry	Disposition — Delivery	Number of Bales Delivered 1925-26 (1)	1924-25 (2)	1923-24 (2)	1922-23 (2)
1	Export by drays	87515	86769	66949	62274
2	Export by cars	235419	163027	72821	64647
3	Export-warehouse wharf	25773	164590	179906	49995
4*	Morgan Line, drays	3408	7131	2516	(a)
5*	Morgan Line, cars	22829	44326	32664	(a)
6	Line Movement-drays	4920	3841	1432	(b) 35579
7	Line Movement-cars	46114	66879	32451	(b) 25716
8	Local Mills	18888	21316	15967	(a)
9	Total out by Vessel (Total of entries 1, 2, 3, 4, 5)	374944	465843	354856	(c)176916
10	Total of all del'd	444866	557879	404706	238211
11	Percentage out over warehouse wharf to total out by vessel. (Percent of entry 3 to entry 9)	6.87%	35.33%	50.70%	(d)28.26%
12	Percentage out over warehouse wharf to total of all cotton del'd. (% of entry 3 to entry 10)	5.79%	29.52%	44.45%	20.98%

*Coastwise Movement.

(1) Aug. 1st, 1925, to April 30th, 1926, inc.
(2) Cotton Season Aug. 1st one year to July 31st, the next.

(a) Cannot give figures for this movement as same not segregated season 1922-23, but included in figure shown in entries 6 and 7 (See "(a)")
(b) Shown in warehouse report as "Domestic Shipments" and includes all movement out season 1922-23, except export, without segregation. In other words embraces entries 4, 5, 6, 7, and 8.
(c) Total export movement only (entries 1, 2, and 3) unable to include coastwise movement. See "(a)" and "(b)".
(d) Percentage to total export only. Percentage would be reduced if total (entry 9) included coastwise. See "(c)". Coastwise movement would not be over warehouse wharf.

June 1st, 1926.

[fol. 63]

Exhibit A-118

I. C. C. Docket No. 14940

Comparison of Rates, in Cents per 100 Pounds, on Cotton, Showing Relative Standing of Concentrators under Present One-rate Plan and Proposed Two-rate Plan

Originating Van Alstyne, Texas, and handled as below	Concentration	Rates necessary and actually applied to effect shipside delivery	
		Under present 2-rate plan	Under present 1-rate plan
Compressed in transit at McKinney, Texas, and concentrated at Dallas; reshipped to shipside on thru export B/L or local B/L for export.	First at Dallas.	83.5	83.5

Compressed in transit at McKinney, Texas, and concentrated at port in shipside or water front warehouse.	First at Water-front Warehouse.		80			83.5	
Compressed in transit at McKinney, Texas and concentrated at port—back from water front, moved thence to ship.	First at Warehouse back of Water-front.		80 Plus 3.5 83.5			83.5	
Concentrated and compressed at McKinney; again concentrated at Dallas and reshipped to shipside on thru export B/L or Local B/L for export.	Second at Dallas.		83.5 Plus 3.5 87.0	Sec. Conc. Chg.		83.5 Plus 3.5 87.0	Sec. Conc. Chg.
Concentrated and compressed at McKinney, and again concentrated at port in shipside of water front warehouse.	Second at Water-front Warehouse.		80			83.5	
Concentrated and compressed at McKinney; again concentrated at port—back from water front and moved thence to shipside.	Second at Warehouse back of Water-front.		80 Plus 3.5 83.5	Either Drayage or Sec. Conc. Charge		83.5 Plus 3.5 87.0	Either Drayage or Sec. Conc. Charge

Authority for Rates: Texas Lines Tariff No. 17-D, A. C. Fonda's I. C. C. No. 135, and Texas Lines Tariff No. 50, A. C. Fonda's I. C. C. No. 166.

Also Southern Pacific Lines Tariff No. 736-A, G. H. & S. A. Ry. I. C. C. No. 1546.

Exhibit No. A-119

I. C. C. Docket No. 14940

Cotton Rates, in Cents per 100 Pounds, Showing Relative Standing of Concentrators in Cases Where Compresses are Passed

Originating Van Alstyne, Texas and handled as below:	Rates Necessary and Actually Applied to effect Shipside Delivery Under 2-Rate Plan	Under 1-Rate Plan
Passing compress at McKinney, Texas and compressed and concentrated at Dallas, Texas, reshipped to shipside on thru export B/L or local B/L for export.	83.5 Plus 12.0 Penalty 95.5	83.5 Plus 12. Penalty 95.5
Passing compress at McKinney, Texas and all other intermediate presses and concentrated and compressed at port in shipside or water front warehouse.	80 (No Penalty)	83.5 Plus 12. Penalty 95.5
Passing compress at McKinney, Texas and other intermediate compresses, concentrated and compressed at port in back from water front warehouse, moved thence to shipside.	80 Plus 3.5 Drayage 83.5	83.5 Plus 12. Penalty 95.5

Authority for rates and penalty: A. C. Fonda's I. C. C. Nos. 135 and 166, also G. H. & S. A. Ry. I. C. C. No. 1546.

Authority for 12 cent penalty: Item 6-D, A. C. Fonda's I. C. C. No. 166.

[fol. 65] **Exhibit No. A-120, Witness I. M. Griffin**

I. C. C. Docket No. 14940. R. R. C. of Texas Docket No. 2256

Showing the transportation costs of a bale of cotton, weighing 525 pounds, to reach shipside at Houston and Galveston, when handled at warehouses and compresses at the ports and when shipped direct from interior Texas common points, all costs exclusive of intraplant service costs and wharfage and under rules and rates as now in effect and comparative with one rate for all deliveries, as per I. C. C. order in Docket No. 14940.

At Houston, Texas, and from Interior

First concentration either at port or in the interior, costs per bale to shipside are as follows (Texas common point rail rate 80¢ per 100 pounds):

No. 1. Waterfront Plants that can Effect Direct Shipside Delivery Without Switching or Drayage

At Present Basis, Texas Common Point Rate 80¢ per 100 pounds		Under One-rate Plan Basis, Proposed Rate 83¢ per 100 Pounds, Texas Common Points for All Deliveries	
1 bale 525# @ 80¢ (Common point intrastate rate)	$4.20	1 bale 525# @ 83¢	$4.3575
Less 525# @ 1¢ unloading allowance	.0525	Less 525# @ 1¢ unloading allowance	.0525
Net	4.1475	Net	4.3050

No. 2. Shipment from Interior Common Points to Shipside

1 bale 525# @ 83½¢	4.3837	1 bale 525# @ 83¢	4.3575

No. 3. Back from the Waterfront Plants. Delivery from Plants to Shipside made by Switching Service (Standard Compressed) and Contract Unloading

1 bale 525# @ 80¢	4.20	1 bale 525# @ 83¢	4.3575
Less 525# @ 1¢ unloading allowance	.0525		
Net	4.1475		
Plus switching 73 bales ($8.10 per car) Average per bale	.1110		
Topping 20 bales @ 10¢ per bale	.0274		
Unloading from cars and delivery to ship at shipside	.0400		
	4.3259		

No. 4. Back from the Waterfront. (High Density Bales.) Delivery from Plants to Shipside Made by Switching Service and Contract Unloading

1 bale 525# @ 80¢	4.20	1 bale 525# @ 83¢	4.3575
Less 525# @ 1¢ unloading allowance	.0525		
Net	4.1475		
Plus switching 100 bales ($8.10 per car)			

Average per bale ...	.0610
Topping 25 bales @ 10¢ per bale	.0250
Unloading from cars and delivery to ship at shipside	.0400
	4.2935

No. 5. Waterfront Plants That Cannot Effect Direct Shipside Delivery, but can Make Delivery to Barges on the Waterfront

1 bale 525# @ 80¢	4.20	1 bale 525# @ 83¢	4.3575
Less 525# @ 1¢ unloading allowance	.0525		
Net	4.1475		
Plus barge charge, per bale	.1700		
	4.3175		

[fol. 66] In the above computations, the average bales per car (73 standard and 100 high density) were arrived at and the average number of bales topped were obtained, by taking the maximum average loading of cars 36 feet in length and cars 40 feet in length, as cars of these two lengths are about evenly distributed in transportation service.

The above costs of delivery by switching service or barges from warehouses at Houston that do not effect shipside delivery are only the added transportation charges and do not include any costs or charges for intraplant service in taking the cotton out of stock and loading it into cars, or delivery to barges. Such costs would be in addition to the costs of delivery by switch service or barges as shown above.

NOTE.—On that percentage of cotton that has been concentrated once in the interior and is unloaded at warehouses at the port that cannot effect direct shipside delivery, but must use cars, barges or drays for delivery to shipside, if refund of costs of delivery to shipside is claimed, there would be, under the present rules, as per Texas Lines Tariff 29-C, I. C. C. 190, a penalty charge of 3½¢ per 100 pounds in addition to the above costs as shown in Items Nos. 3, 4, 5, and 6.

Very little cotton is concentrated a second time in the interior. Based on one free concentration in the interior

and or at the ports, the above referred to penalty would not apply.

On account of long distance at Houston, very little cotton is delivered by dray from back of the waterfront plants to shipside.

Galveston, Texas

The situation at Galveston, Texas, is the same as at Houston, Texas, except with respect to delivery from back of the waterfront plants that cannot effect shipside delivery, the difference being that all deliveries are made by dray from such plants to shipside at Galveston and the costs would be as follows:

No. 6

Back from the Waterfror

At Present

Under One-Rate Plan

1 bale 525# @ 80¢	$4.2000	1 bale 525# @ 83¢	$4.3575
Less 525# @ 1¢ unloading allowance	.0525		
	4.1475		
Plus 18¢ to 20¢ per bale drayage	.1800		
	4.3275		

The rates from the interior to shipside are any quantity, while the switching rates are basis carload, consequently, the back from the waterfront plants are compelled to have [fol. 67] maximum carload quantities to make shipside delivery at Houston on basis of the costs shown above. With less number of bales per car than shown in exhibit, the cost per bale of switching would be increased. Likewise, a higher switching rate than $8.10 per car would increase the cost per bale of switching. When total cost per bale of delivery to shipside, including unloading from cars at shipside, exceeds 18-3/8¢, the shipper requiring further transportation service by switching to effect delivery to shipside will exercise the transit privilege where no penalties are involved.

[fol. 68] **Exhibit No. A-122, Witness I. M. Griffin**

I. C. C. Docket No. 14940. R. R. C. of Texas Docket No. 2256

Item 412-A, page 5, Supplement No. A to Texas lines Tariff 17-D, I. C. C. 135

Effective July 28, 1924, in Supplement A (R. C. T. Cir. No. 6274-S, 4547, 5795, and 6031)

Unloading Charges at Galveston, Houston, Texas City, Beaumont, Orange, or Port Arthur, Texas

On cotton originating in Texas and billed to Houston, Galveston, Texas City, Beaumont, Orange or Port Arthur, the line or lines participating in the transportation shall assume the cost, not exceeding one (1) cent per 100 pounds, of unloading at compresses or warehouses within the switching limits of Houston, Galveston, Texas City, Beaumont, Orange or Port Arthur, where no concentration privilege is taken at such billed destination, the rail carriers' service having ended with the unloading of the cotton at such compress or warehouse, payment to be made upon receipt of bills for cost of such service supported by the original inbound expense bills. (See Note.)

Note.—Where cotton is compressed at such destinations at the expense of the rail carrier, the unloading charge at such compresses is included in the compress allowance.

Item 140, Page 15, Texas Lines Tariff No. 29-C, I. C. C. 190

Unloading Charges at Houston, Texas (S. 4547)

On cotton originating outside the state of Texas, the Beaumont, Sour Lake & Western Ry., Galveston, Harrisburg & San Antonio Ry., Gulf Colorado & Santa Fe Railway, Houston & Texas Central R. R., Houston East & West Texas, Ry., International-Great Northern Railroad, Missouri-Kansas-Texas Railroad of Texas, St. Louis, Brownsville & Mexico Ry., Texas & New Orleans R. R., or Trinity & Brazos Valley Railway will assume the cost, not exceeding one (1) cent per 100 pounds, of unloading at compress and warehouses within the switching limits of Houston, where no concentration privilege is taken at Houston, the rail carriers' service having ended with the unloading of cotton at such compresses or warehouses. Payment will

be made upon receipt of bills for cost of such service supported by the original inbound expense bills.

NOTE 1.—Where cotton is compressed at Houston at expense of the rail carrier, the unloading charge at Houston compresses is included in the compress allowance.

NOTE 2.—Cost of unloading cotton will not be assumed by the carriers when handled at carload rates.

Item 145, Page 15, Texas Lines Tariff No. 29-C, I. C. C. 190

Unloading Charges at Galveston and Texas City, Texas
(S. 4547)

On cotton originating outside the State of Texas, the carriers will assume the cost, not exceeding one (1) cent per 100 pounds, of unloading at compresses and warehouses within the switching limits of Galveston or Texas City, where no concentration privilege is taken at these points, the rail carriers' service having ended with the unloading [fol. 69] of Cotton at such compresses or warehouses. Payment will be made upon receipt of bills for cost of such service supported by the original inbound expense bills.

NOTE 1.—Where Cotton is compressed at Galveston or Texas City at expense of the rail carrier, the unloading charge at compresses at the points is included in the compress allowance.

NOTE 2.—Cost of unloading Cotton will not be assumed by the carriers when handled at carload rates.

[fol. 70] **Exhibit No. A-124**

I. C. C. No. 105 (Cancels I. C. C. No. 98)

Only one supplement to this tariff will be in effect at any time. This tariff will be reissued effective on or before November 8, 1926.

W. P. Emerson, Agent and Attorney for Issuing Carriers Listed on Page 1 as Participating under Power of Attorney FX1

Freight Tariff 4-B (Cancels Freight Tariff No. 4-A)

Joint Demurrage, Storage, and Handling Charges Tariff, Containing Demurrage, Storage and Handling Charges and Rules, and Rules for Handling Cotton and Cotton Linters

Applying At

Algiers, La.; Amesville (Marrero), La.; Anchorage (T. & P. RY), La.; Avondale, La.; Baton Rouge, La.; Bogarts, La.; Destrehan, La.; Export Oil Spur, La.; Good Hope, La.; Gouldsboro, La.; Gretna, La.; Harahan, La.; Harvey, La.; Marrero, La.; Maryland, La.; Meraux, La.; New Orleans, La.; Norco, La.; North Baton Rouge, La.; Port Chalmette, La.; St. Rose, La.; Scotland, La., Waggaman, La.; Westwego, La.

NOTE.—Southern Classification referred to herein is Southern Classification No. 47, Agent E. H. Dulaney's I. C. C. No. 19 supplements thereto of successive issues thereof.

Issued April 3, 1926. Effective May 8, 1926 (Except as Noted in Individual Items)

Issued by W. P. Emerson, Agent, New Orleans, La.

Communications regarding rates published herein should be addressed to traffic officials named on page 1 hereof.

[fol. 71] Rules for Handling Compressed Cotton and Compressed Cotton Linters in Bales

Item No. 19

Section 1. Six cents per square bale* will be charged consignees or owners for ranging, turning down and heading cotton and cotton linters for the purpose of sampling and marking. A like amount additional will be charged each time this service is performed.

Section 2. It is understood that the receipt given to the railroad when the cotton and cotton linters are turned down and ranged shall be binding upon the owner or owners, and shall establish delivery.

Section 3. The cotton and cotton linters will be allowed to remain in the yards or on the premises of the railroad, as a matter of convenience to consignee or owner, under the following terms, and storage charges as provided herein will be assessed:

(a) On Domestic Shipments.—Four working days from date of arrival and notice to consignee without charge.

(b) On Export and Coastwise Shipments.—Seven working days from date of arrival and notice to consignee without charge. (Applies when Terminal Agent is advised within forty-eight hours after notice of arrival that Cotton and Cotton Linters is for export or coastwise movement).

(c) After expiration of free time as shown in paragraphs (a) and (b), the charges on Domestic, Export and Coastwise Shipments will be as follows:

For 2 days and under	5 cents per bale
For 6 days and over 2 days	10 cents per bale
For 11 days and over 6 days	20 cents per bale
For 16 days and over 11 days	25 cents per bale
For 26 days and over 16 days	30 cents per bale

After 26 days, one (1) cent per bale per day additional.

(d) The railroad reserves the right at the end of thirty days from time of arrival to remove and store at the expense and risk of consignee or owner in a public warehouse.

(e) # Any expense for tarpaulins and skids, when such are necessary, shall be borne by consignee or owner.

(f) So far as practicable, it is understood that the railroad will respect the wishes of owners as to place of storage, provided such written requests, naming the place or places of storage, are in the hands of the carrier when the Cotton and Cotton Linters are to be stored; otherwise, the place of storage will be selected by the railroad.

(g) The term "working day" herein used shall be understood to mean all days except Sundays and legal holidays, and except as otherwise provided in paragraphs (h) and (i).

(h) When the condition of the weather during the prescribed free time is such as to make impossible to remove the Cotton or Cotton Linters from railroad premises without serious injury to the freight, the free time shall be extended on domestic shipments until of four (4) days, and on export and coastwise shipments until a total of seven

(7) days, free from such weather interference shall have been allowed. (See Note).

(i) When, because of high water, it is impossible to remove the Cotton and Cotton Linters from railroad premises during the prescribed free time. (See Note.)

NOTE.—Paragraphs (h) and (i) shall not absolve a consignee from liability for storage if others similarly situated and under the same conditions are able to remove freight.

Section 4. After having been turned down and ranged, rejections and cotton and cotton linters under arbitration must be reheaded at once and removed within twenty-four hours, or the railroad will store in public warehouse at owner's expense.
[fol. 72] So far as practicable, the railroad will respect the wishes of owners as to place of storage of such cotton and cotton linters under same conditions and circumstances as referred to in Section 3, Paragraph (f).

Section 5. It is understood that the cotton men agree to enforce the rule in buying cotton and cotton linters in the interior—that not exceeding 100 bales shall be embodied under one mark and not more than one mark shall be included in one bill of lading; and the railroad agrees to use every reasonable effort to enforce this rule.

Section 6. It is understood that, if there should be discrepancies in marks, as shown on notices of arrival to consignees, as compared with marks shown on bills of lading, and the notices are accepted by the consignees without the attention of the railroad's agent being called promptly to the discrepancies, storage accrues same as if marks on notices and bills of lading agreed.

*Two round bales are considered as one square bale.
#Applies only in connection with L.&N.R.R., N.O.& N.E.R.R. and/or N.O.G.N.R.R.

[fol. 73] **Exhibit No. A-130**

Southern Compress & Warehouse Co., Galveston, Texas

Maximum and Minimum cost, Exclusive of Topping of Hand-trucking from Storage and Loading Into Cars 100 Bales of Cotton

Maximum cost:

32 men hand-trucking and handling 100 bales of cotton 1016 feet into cars, 1 hour @ 40¢ per hour $12.80
Average cost per bale ..... 12.8¢

Minimum cost:

16 men hand-trucking and handling 100 bales of cotton 50 feet into cars, 1 hour @ 40¢ per hour $6.40
Average cost per bale ..... 6.4¢

The above costs are for labor only and do not include any overhead expense or depreciation on equipment and facilities used in performing the service.

[fol. 74] Southern Compress & Warehouse Co., Galveston, Texas

Maximum and Minimum Cost of hand-trucking 100 Bales of Cotton from Storage to be Loaded in Drays or Motor Trucks

Maximum cost:

20 men trucking and handling 100 bales of cotton 1016 feet, 1 hour @ 40¢ per hour $8.00
Average cost per bale ..... 8¢

Minimum cost:

8 men trucking and handling 100 bales of cotton 50 feet, 1 hour @ 40¢ per hour $3.20
Average cost per bale ..... 3.2¢

The above costs are for labor only and do not include any overhead expense or depreciation on equipment and facilities used in performing the service.

[fol. 75] Southern Compress & Warehouse Co., Houston, Texas

Maximum and Minimum Cost, Exclusive of Topping, of Hand-trucking from Storage and Loading Into Cars 100 Bales of Cotton

Maximum cost:

24 men hand-trucking and handling 100 bales of cotton 1,000 feet to cars, 1 hour @ 35¢ per hour	$8.40
8 men loading into cars 1 hour @ 35¢ per hour	2.80
Total cost	$11.20
Average cost per bale	11.2¢

Minimum cost:

14 men hand-trucking and handling 100 bales of cotton 50 feet to cars, ½ hour @ 35¢ per hour	$2.45
8 men loading into cars, 1 hour @ 35¢ per hour	2.80
Total cost	$5.25
Average cost per bale	5.25¢

The above costs are for labor only and do not include any overhead expense or depreciation on equipment and facilities used in performing the service.

[fol. 76] Southern Compress & Warehouse Co., Houston, Texas

Maximum and Minimum Cost of Hand-trucking 100 Bales of Cotton from Storage to be Loaded on Drays or Motor Trucks

Maximum cost:

20 men hand-trucking and handling 100 bales of cotton 1,000 feet, 1 hour @ 35¢ per hour	$7.00
Average cost per bale	7¢

Minimum cost:

14 men hand-trucking and handling 100 bales of cotton 50 feet, ½ hour @ 35¢ per hour	$2.45
Average cost per bale	2.45¢

The above costs are for labor only and do not include any overhead expense or depreciation on equipment and facilities used in performing the service.

[fol. 77] **Exhibit No. A-133, Witness J. K. Moore**

I. C. C. Docket 14940

Statement Showing Cotton Production and Consumption Statistics (in 1,000 Bales)

Season	World production	United States production	Southwestern production (Tex., Okla., Ark., W. La.)
1916-17	19,845	11,450	6,109
1927-18	19,675	11,302	5,666
1918-19	20,613	12,041	4,806
1919-20	21,304	11,421	5,273
1920-21	20,875	13,440	7,262
1921-22	15,439	7,954	3,743
1922-23	19,300	9,762	5,194
1923-24	19,600	10,140	5,984
1924-25	24,800	13,628	8,029
1925-26	27,800	16,086	7,93[illegible]
10 Year Average	20,933	11,722	5,999

	Consumption in United States	U. S. production over consumption	Southwestern production
1916-17	6,789	4,661	6,109
1917-18	6,566	4,736	5,666
1918-19	5,766	6,275	4,806
1919-20	6,420	5,001	5,273
1920-21	4,893	8,547	7,262
1921-22	5,910	2,044	3,743
1922-23	6,666	3,096	5,194
1923-24	5,681	4,459	5,984
1924-25	6,191	7,437	8,029
9 Year Average	6,098	5,624	5,785

	Ratio U. S. to world production	Ratio Southwest to world prod.	Ratio Southwest to U. S. production
1916-17	57.70	30.79	53.36
1917-18	57.44	28.80	50.14
1918-19	58.41	23.31	39.92
1919-20	53.41	24.66	46.17
1920-21	64.39	34.79	54.04
1921-22	51.52	24.25	47.06
1922-23	30.58	26.92	53.21
1923-24	51.74	30.53	59.02
1924-25	54.95	32.37	58.92
1925-26	57.86	28.54	49.33
10 Year Average	56.00	28.66	51.18

Source: Production—U. S. Dept. of Agriculture.
Consumption—U. S. Dept. of Commerce, Bureau of the Census.

[fol. 78] **Exhibit No. A-134, Witness J. K. Moore**

I. C. C. Docket 14940

Statement Showing Production and Consumption of Cotton (in Bales) in Southeastern States During Years Ended July 31, 1921, 1922, 1923, 1924, and 1925

Year	Production	Consumption
Alabama:		
1921	670,330	309,646
1922	587,669	377,548
1923	819,870	414,880
1924	599,140	392,705
1925	985,653	430,051
Total	3,662,662	1,924,830

Year	Production	Consumption
Georgia:		
1921	1,447,159	614,000
1922	822,621	781,850
1923	735,874	974,662
1924	612,812	864,328
1925	1,030,202	966,324
Total	4,648,668	4,201,263

Year	Production	Consumption
Mississippi:		
1921	900,371	31,208
1922	816,961	40,463
1923	985,787	46,117
1924	622,617	34,751
1925	1,116,350	32,201
Total	4,442,086	184,740

Year	Production	Consumption
North Carolina:		
1921	949,484	926,384
1922	803,620	1,198,163
1923	879,294	1,326,174
1924	1,053,402	1,119,859
1925	860,147	1,334,794
Total	4,545,947	5,985,374

Year	Production	Consumption
South Carolina:		
1921	1,652,177	771,560
1922	786,039	918,725
1923	517,464	1,035,557
1924	793,817	947,964
1925	837,815	1,029,797
Total	4,589,312	4,703,603

Year	Production	Consumption
Tennessee:		
1921	314,811	74,689
1922	297,555	107,731
1923	385,860	123,052
1924	235,344	120,053
1925	355,919	115,202
Total	1,589,489	540,727

5 Year Summary

Year	Production	Consumption
Alabama	3,662,662	1,924,830
Georgia	4,648,668	4,201,263
Mississippi	4,442,086	184,740
North Carolina	4,545,947	5,985,374
South Carolina	4,587,312	4,703,603
Tennessee	1,589,489	540,727
Total	23,476,164	17,540,537

Authority: 153 and 158, Bulletins, cotton production and distribution issued by Department of Commerce.

[fol. 79] **Exhibit No. A-135, Witness J. K. Moore**

I. C. C. Docket 14940

Statement Showing Production and Consumption of Cotton (in Bales) in Southwestern States During Years Ended July 31, 1921, 1922, 1923, 1924, and 1925

Year	Production	Consumption
Texas:		
1921	4,148,399	62,617
1922	2,129,660	76,606
1923	3,125,758	83,221
1924	4,212,248	79,627
1925	4,850,956	93,494
Total	18,467,021	395,565

Year	Production	Consumption
Oklahoma:		
1921	1,302,610	*
1922	477,777	*
1923	637,003	*
1924	665,904	*
1925	1,506,077	*
Total	4,589,371	*

Year	Production	Consumption
Arkansas:		
1921	1,182,010	*
1922	788,047	*
1923	1,010,520	*
1924	643,643	*
1925	1,086,814	*
Total	4,711,034	*

Year	Production	Consumption
Louisiana:		
1921	389,569	39,327
1922	284,330	40,704
1923	345,407	45,135
1924	373,812	35,097
1925	498,386	33,566
Total	1,891,504	193,829

*Included in "all other states" for which following consumption was reported.

1921— 70,041
1922— 70,892
1923— 75,552
1924— 68,550
1925— 65,528

Total 350,563

5 Year Summary

State	Production	Consumption
Texas	18,467,021	395,565
Oklahoma	4,589,371	*
Arkansas	4,711,034	*
Louisiana	1,891,504	193,829
Total	29,658,930	589,394

Authority: Bulletins 153 and 158, Cotton distribution and production, issued by Department of Commerce.

*Included in "all other states" for which following consumption was reported.

1921— 70,041
1922— 70,892
1923— 75,552
1924— 68,550
1925— 65,528

Total 350,563

[fols. 80-1]

Exhibit No. A-136, Witness J. K. Moore

I. C. C. Docket 14940

Statement Showing Cotton Handled by All Compresses Reporting from Texas, Oklahoma, Arkansas and Western Louisiana for Seasons Named

22 Compresses, List 1

Year	Bales railroad transit handled	Bales R. R. concentrated handled	Total bales handled	Ratio R. R. transit cotton handled	Ratio R. R. concent. cotton handled	Ratio city or wagon cotton handled
1913–14	73,958	825,517	1,094,193	6.8	75.4	17.8
1914–15	103,392	1,009,754	1,357,895	7.6	74.3	18.1
1915–16	79,622	719,315	988,970	8.1	72.3	19.6
1916–17	120,315	885,756	1,240,876	9.7	71.4	18.9
1917–18	123,378	828,877	1,166,466	10.6	71.0	18.4
1918–19	72,285	688,056	953,009	7.6	72.2	20.2
1919–20	157,456	741,783	1,096,325	14.4	67.6	18.0
1920–21	268,619	790,549	1,331,589	20.1	59.4	20.5
1921–22	195,169	506,563	885,063	22.1	57.2	20.7
1922–23	244,615	535,584	963,856	25.4	55.5	19.1
1923–24	293,906	546,615	1,017,918	28.9	53.7	17.4
1924–25	665,316	656,701	1,567,985	42.4	41.9	15.7

24 Compresses, List 2

1914–15	104,673	1,046,583	1,403,886	7.5	74.5	18.0
1915–16	81,104	747,539	1,026,905	7.9	72.8	19.3
1916–17	124,772	920,172	1,291,569	9.7	71.2	19.1
1917–18	133,890	852,868	1,218,846	11.0	70.0	19.0
1918–19	80,868	712,735	996,194	8.1	71.5	20.4
1919–20	166,718	754,815	1,127,031	14.8	67.0	18.2
1920–21	286,650	816,247	1,383,182	20.7	59.0	20.3
1921–22	212,452	519,998	924,933	23.0	56.2	20.8
1922–23	269,355	559,069	1,024,119	26.3	54.6	19.1
1923–24	318,131	569,435	1,075,523	29.6	52.9	17.5
1924–25	692,877	674,312	1,625,269	42.6	41.5	15.9

Exhibit No. A-136—Continued

36 Compresses, List 3

Year	Bales railroad transit handled	Bales R. R. concentrated handled	Total bales handled	Ratio R. R. transit cotton handled	Ratio R. R. concent. cotton handled	Ratio city or wagon cotton handled
1915–16	138,111	1,045,736	1,500,289	9.2	69.7	21.1
1916–17	227,206	1,293,069	1,901,054	11.9	68.0	20.1
1917–18	230,156	1,227,112	1,849,664	12.4	66.3	21.3
1918–19	125,719	983,446	1,417,104	8.8	69.4	21.8
1919–20	244,073	1,070,219	1,666,580	14.6	64.2	21.2
1920–21	413,074	1,101,389	1,960,164	21.1	56.2	22.7
1921–22	295,327	703,245	1,302,474	22.7	54.0	23.3
1922–23	427,828	721,111	1,464,989	29.2	49.2	21.6
1923–24	496,788	736,894	1,551,744	32.0	47.5	20.5
1924–25	988,614	845,271	2,254,882	43.8	37.5	18.7
		40 Compresses, List 4				
1916–17	265,174	1,331,831	2,037,469	13.0	65.4	21.6
1917–18	247,620	1,258,997	1,951,590	12.7	64.5	22.8
1918–19	139,535	1,009,203	1,508,911	9.3	66.9	23.8
1919–20	262,289	1,098,816	1,755,147	14.9	62.6	22.5
1920–21	423,021	1,116,281	2,031,002	20.8	55.0	24.2
1921–22	309,674	724,419	1,380,974	22.4	52.5	25.1
1922–23	452,885	747,475	1,564,292	28.9	47.8	23.3
1923–24	532,043	769,116	1,665,863	31.9	46.2	21.9
1924–25	1,029,405	877,498	2,379,328	43.3	36.9	19.8
[fol. 80-2]		45 Compresses, List 5				
1917–18	263,772	1,395,581	2,160,606	12.2	64.6	23.2
1918–19	154,708	1,116,330	1,677,057	9.2	66.6	24.2
1919–20	276,660	1,194,457	1,912,345	14.5	62.5	23.0
1920–21	440,426	1,240,790	2,246,454	19.6	55.2	25.2
1921–22	333,156	850,118	1,584,742	21.0	53.6	25.4

1922–23.....	490,544	857,329	1,770,222	27.7	48.4	23.9
1923–24.....	570,078	869,934	1,852,231	30.8	47.0	22.2
1924–25.....	1,083,371	1,018,409	2,646,603	40.9	38.5	20.6
			50 Compresses, List 6			
1918–19.....	162,646	1,226,767	1,866,330	8.7	65.7	25.6
1919–20.....	297,878	1,273,800	2,065,312	14.4	61.7	23.9
1920–21.....	478,052	1,337,766	2,444,620	19.6	54.7	25.7
1921–22.....	372,218	914,158	1,750,775	21.3	52.2	26.5
1922–23.....	547,590	920,307	1,943,380	28.2	47.4	24.4
1923–24.....	608,320	957,588	2,043,391	29.8	46.9	23.3
1924–25.....	1,136,452	1,116,326	2,851,873	39.9	39.2	20.9
			56 Compresses, List 7			
1919–20.....	330,434	1,329,190	2,185,265	15.1	60.8	24.1
1920–21.....	527,704	1,416,382	2,626,151	20.1	53.9	26.
1921–22.....	430,496	985,280	1,916,879	22.5	51.4	26.1
1922–23.....	649,379	997,296	2,168,460	29.9	46.0	24.1
1923–24.....	714,518	1,064,353	2,293,307	31.2	46.4	22.4
1924–25.....	1,274,106	1,209,340	3,131,580	40.7	38.6	20.7
			70 Compresses, List 8			
1920–21.....	698,000	1,779,597	3,347,610	20.9	53.2	25.9
1921–22.....	513,645	1,202,608	2,331,746	22.0	51.6	26.4
1922–23.....	778,956	1,216,587	2,665,447	29.2	45.6	25.2
1923–24.....	841,025	1,305,757	2,794,169	30.1	46.7	23.2
1924–25.....	1,554,946	1,485,663	3,904,208	39.8	38.1	22.1
			81 Compresses, List 9			
1921–22.....	591,477	1,349,903	2,670,595	22.1	50.5	27.4
1922–23.....	873,111	1,354,189	3,032,482	28.8	44.7	26.5
1923–24.....	956,906	1,425,913	3,142,257	30.5	45.4	24.1
1924–25.....	1,687,878	1,634,840	4,323,822	39.0	37.8	23.2

Exhibit No. A-136—Continued

Year	Bales railroad transit handled	Bales R. R. concentrated handled	Total bales handled	Ratio R. R. transit cotton handled	Ratio R. R. concent. cotton handled	Ratio city or wagon cotton handled
			99 Compresses, List 10			
1922–23.....	1,069,422	1,588,996	3,698,994	28.9	42.9	28.2
1923–24.....	1,182,796	1,709,093	3,860,116	30.6	44.3	25.1
1924–25.....	2,057,805	1,907,974	5,333,920	38.6	35.8	25.6
			105 Compresses, List 11			
1923–24.....	1,215,346	1,834,038	4,120,360	29.5	44.5	26.0
1924–25.....	2,107,339	2,082,557	5,637,619	37.4	36.7	25.7
			110 Compresses, List 12			
1924–25.....	2,211,982	2,129,656	5,866,846	37.7	36.3	26.0

Lists

List 1.—Cuero, Ft. Worth, Greenville, Giddings, Italy, Kaufman, Nacogdoches, Palestine, Texarkana and Wichita Falls, Texas; Altus, Chickasha, Durant, Hobart, Okla. City, Shawnee and Waurika, Okla.; Helena, Little Rock, McGehee and Newport, Ark.; Alexandria, La.

List 2.—List 1 plus Hearne and San Augustine, Texas.

[fol. 803]

List 3.—Lists 1 and 2 plus Abilene, Cleburne, Clarksville, Dallas, Hamlin, Honey Grove, Longview, Mexia, Sulphur Springs and Terrell, Texas; Hugo, Oklahoma; Bunkie, Louisiana.

List 4.—Lists 1 to 3 plus Cameron and Tyler, Texas; Marianna, Arkansas; Natchitoches, Louisiana.

List 5.—Lists 1 to 4 plus Kenedy and Marshall, Texas; Walnut Ridge, Little Rock and Conway, Arkansas.

List 6.—Lists 1 to 5 plus Austin, Corsicana, Elgin and Timpson, Texas; Hope, Arkansas.

List 7.—Lists 1 to 6 plus Lubbock, San Antonio and Sweetwater, Texas; Sallisaw, Oklahoma; Magnolia and Batesville, Arkansas.

List 8.—Lists 1 to 7 plus Brownwood, Gainesville, Hubbard, McCregor, Paris, and Vernon, Texas; Ardmore, McAlester, Muskogee and Weleetka, Okla.; Ashdown, Helena and Morrilton, Ark.; Minden, La.

List 9.—Lists 1 to 8 plus Quanah, Robstown, San Marcos, Sinton, Temple, Victoria, Weatherford and Koakum, Texas; Blytheville and Earle, Ark.; Homer, La.

List 10.—Lists 1 to 9 plus Ballinger, Brady, Brenham, Childress, Taylor, Slaton, Stamford, Waco and Waxahachie, Texas; Cushing, Oklahoma; Forrest City and Russellville, Ark.; Rayville, Rustin and Shreveport, La.

List 11.—Lists 1 to 10 plus Harlingen, Texas; Ada, Oklahoma; Blytheville, Searcy and West Memphis, Ark.; Monroe, La.

List 12.—Lists 1 to 11 plus Hillsboro, Lockhart, Marlin, San Juan and Sherman, Texas.

[fol. 80-4] Statement Showing Ratio of Railroad Transit and Railroad Concentrated Cotton Handled by Texas Compresses

10 Compresses, List 1

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
1913-14	41,245	326,795	457,447	9.0	71.4
1914-15	45,935	424,521	594,975	7.7	71.4
1915-16	39,549	318,588	458,589	8.8	68.5
1916-17	59,376	398,887	589,048	9.9	67.7
1917-18	72,576	393,544	573,857	12.6	68.6
1918-19	45,111	330,227	472,498	9.5	67.7
1919-20	68,140	344,414	502,661	13.6	68.5
1920-21	100,898	353,354	592,931	17.1	60.1
1921-22	70,002	213,019	372,796	18.8	57.1
1922-23	106,430	211,937	403,202	26.4	52.5
1923-24	151,001	246,609	500,348	30.2	49.7
1924-25	295,410	232,144	623,199	47.4	37.3

12 Compreses, List 2

1914-15	47,216	461,350	640,966	7.4	72.8
1915-16	41,031	346,812	496,524	8.3	69.7
1916-17	63,833	433,303	639,741	9.9	67.7
1917-18	83,088	417,535	626,237	14.6	66.7
1918-19	53,604	-54,—6	515,635	9.4	67.7

Exhibit No. A-136—Continued

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
1919–20	77,402	357,446	533,367	14.5	67.1
1920–21	118,929	379,052	644,524	18.5	58.8
1921–22	87,285	226,454	412,666	21.1	54.9
1922–23	131,170	235,422	463,465	28.3	50.8
1923–24	175,226	269,429	557,953	31.4	48.3
1924–25	322,971	249,755	680,483	47.5	36.7
		22 Compresses, List 3			
1915–16	93,786	622,976	939,900	10.	66.3
1916–17	158,401	767,280	1,195,781	13.3	64.2
1917–18	172,910	753,978	1,201,464	14.4	62.8
1918–19	97,613	590,586	891,070	9.6	66.3
1919–20	153,154	647,223	1,037,495	14.8	66.4
1920–21	229,756	632,865	1,162,089	19.8	54.5
1921–22	167,816	391,378	763,314	19.9	51.3
1922–23	282,149	372,179	865,607	32.6	39.9
1923–24	343,386	421,321	1,003,018	34.2	42.1
1924–25	583,288	397,846	1,222,566	47.7	32.5
		24 Compresses, List 4			
1916–17	196,234	796,726	1,288,222	15.2	61.9
1917–18	190,249	778,229	1,271,011	14.9	61.2
1918–19	111,159	611,608	952,567	11.7	64.2
1919–20	171,220	670,587	1,098,068	15.6	61.1
1920–21	239,531	643,992	1,205,869	19.9	53.4
1921–22	181,963	406,482	809,538	22.5	50.2
1922–23	306,965	391,608	935,006	32.6	41.9
1923–24	378,192	448,215	1,097,833	34.4	40.8
1924–25	617,853	421,724	1,310,313	47.1	32.2

		26 Compresses, List 5			
1917–18	204,319	814,354	1,341,944	15.2	60.7
1918–19	123,378	631,352	1,001,245	12.3	63.1
1919–20	182,680	695,351	1,142,588	15.9	60.1
1920–21	254,112	677,863	1,282,091	19.8	52.9
1921–22	196,751	437,259	871,734	22.6	50.2
1922–23	325,351	411,440	989,261	32.9	41.6
1923–24	405,758	474,613	1,170,062	34.7	40.6
1924–25	653,848	450,769	1,398,227	46.8	32.4
[fol. 80-5]		**30 Compresses, List 6**			
1918–19	130,780	691,908	1,118,384	11.7	61.9
1919–20	202,050	740,885	1,244,627	16.3	59.5
1920–21	288,168	749,212	1,428,605	20.2	52.4
1921–22	214,152	480,764	1,002,869	23.4	47.9
1922–23	378,876	445,252	1,116,020	33.9	39.9
1923–24	442,370	525,817	1,310,059	33.8	42.4
1924–25	702,617	491,829	1,529,166	45.9	32.2
		33 Compresses, List 7			
1919–20	235,297	783,968	1,326,965	17.7	59.1
1920–21	335,602	811,064	1,554,647	21.6	52.1
1921–22	291,329	539,706	1,132,202	25.7	47.7
1922–23	479,585	506,339	1,296,587	36.9	39.1
1923–24	547,480	621,942	1,531,623	35.7	40.6
1924–25	833,120	570,928	1,765,417	47.2	32.3
		39 Compresses, List 8			
1920–21	415,291	972,497	1,885,384	21.9	51.6
1921–22	336,643	635,035	1,325,518	25.4	47.9
1922–23	568,446	594,642	1,546,720	36.8	38.5
1923–24	651,071	730,015	1,823,561	35.7	40.1
1924–25	979,292	672,140	2,135,051	45.9	31.5

Exhibit No. A-136—Continued

47 Compresses, List 9

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
1921-22	413,061	737,669	1,571,290	26.3	46.9
1922-23	657,555	670,108	1,768,245	37.2	37.9
1923-24	765,830	808,297	2,003,584	38.6	38.6
1924-25	1,107,187	760,075	2,442,776	45.3	31.1

50 Compresses, List 10

1922-23	832,750	798,341	2,262,212	36.8	35.3
1923-24	972,728	973,176	2,626,559	36.2	36.2
1924-25	1,434,256	913,633	3,222,769	44.5	28.4

60 Compresses, List 11

1923-24	998,896	978,367	2,727,844	36.6	35.8
1924-25	1,452,301	922,448	3,261,283	44.5	28.3

65 Compresses, List 12

1924-25	1,556,944	969,547	3,490,510	44.6	27.8

Lists

List 1.—Cuero, Fort Worth, Greenville, Giddings, Italy, Kaufman, Nacogdoches, Palestine, Texarkana, Wichita Falls.
List 2.—List No. 1, plus Hearne and San Augustine.
List 3.—Lists 1 and 2, plus Abilene, Cleburne, Clarksville, Dallas, Hamlin, Honey Grove, Longview, Mexia, Sulphur Springs and Terrell.
List 4.—Lists 1 to 3, plus Cameron and Tyler.
List 5.—Lists 1 to 4, plus Kenedy and Marshall.
List 6.—Lists 1 to 5 plus Austin, Corsicana, Elgin and Timpson.
List 7.—Lists 1 to 6, plus Lubbock, San Antonio and Sweetwater.

List 8.—Lists 1 to 7, plus Brownwood, Gainesville, Hubbard, McGregor, Paris and Vernon.
List 9.—Lists 1 to 8, plus Quanah, Robstown, San Marcos, Sinton, Temple, Victoria, Weatherford and Yoakum.
List 10.—Lists 1 to 9, plus Ballinger, Brady, Brenham, Childress, Colorado, Memphis, Childress, Taylor, Slaton, Stamford, Waco and Waxahachie.
List 11.—Lists 1 to 10, plus Harlingen.
List 12.—Lists 1 to 11, plus Hillsboro, Lockart, Marlin, San Juan, and Sherman.

[fol. 80-6] Statement Showing Ratio of Railroad Transit and Railroad Concentrated Cotton Handled by Compresses at Oklahoma Points

7 Compresses, List 1

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
1913–14	27,124	226,785	285,235	9.6	79.5
1914–15	49,686	363,320	469,120	10.6	77.5
1915–16	35,747	200,713	269,772	13.2	74.4
1916–17	55,084	247,258	331,370	16.6	74.6
1917–18	43,876	217,332	309,675	14.2	70.2
1918–19	17,155	163,307	215,343	7.1	75.8
1919–20	82,168	208,822	346,416	23.7	60.2
1920–21	160,761	217,460	443,556	36.2	49.3
1921–22	109,520	144,900	294,147	37.2	49.3
1922–23	119,049	180,634	339,108	35.1	53.5
1923–24	121,364	215,469	383,166	31.7	56.2
1924–25	324,475	265,568	688,072	47.2	38.6

8 Compresses, List 2

1915–16	37,892	209,317	282,387	13.4	74.1
1916–17	59,880	267,748	360,967	15.5	74.2
1917–18	47,050	242,043	344,892	13.6	70.1
1918–19	18,058	184,182	242,746	7.4	75.9
1919–20	83,708	226,536	372,018	22.5	60.9
1920–21	176,159	242,389	493,225	35.7	49.1

Exhibit No. A-136—Continued

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
1921–22	111,191	154,508	308,800	36.1	50.1
1922–23	124,239	193,356	359,601	34.5	53.7
1923–24	127,331	222,099	398,233	31.9	55.8
1924–25	353,526	277,674	754,513	46.9	36.8
		9 Compresses, List 3			
1919–20	83,917	234,915	387,451	21.7	60.6
1920–21	178,377	255,083	517,131	34.5	49.3
1921–22	112,292	160,934	320,243	36.1	50.1
1922–23	125,319	199,941	371,166	33.7	53.7
1923–24	127,464	224,102	402,308	31.7	55.7
1924–25	358,785	279,014	764,527	46.9	36.5
		13 Compresses, List 4			
1920–21	251,469	421,838	807,574	31.1	52.2
1921–22	144,806	252,734	462,718	31.3	54.5
1922–23	154,464	209,079	518,023	29.8	57.7
1923–24	146,589	323,366	536,859	27.3	60.2
1924–25	480,542	426,348	1,070,016	44.9	39.8
		14 Compresses, List 5			
1922–23	157,467	308,540	532,647	29.6	57.9
1923–24	148,426	333,814	550,226	26.9	60.7
1924–25	498,423	435,360	1,101,482	45.3	39.5
		15 Compresses, List 6			
1923–24	148,798	338,569	558,428	26.6	60.6
1924–25	507,267	439,336	1,123,433	45.2	39.1

Lists

List 1.—Altus, Chickasha, Durant, Hobart, Oklahoma City, Shawnee, Waurika.
List 2.—List 1 plus Hugo.
List 3.—Lists 1 and 2, plus Sallisaw.
List 4.—Lists 1 to 3, plus Ardmore, McAlester, Muskogee, and Weleetka.
List 5.—Lists 1 to 4, plus Cushing.
List 6.—Lists 1 to 5, plus Ada.

[fol. 80-7] Statement Showing Ratio Railroad Transit and Railroad Concentrated Cotton Handled by Compresses in Arkansas

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
		4 Compresses, List 1			
1913–14	5,302	260,901	335,685	1.6	77.1
1914–15	7,635	212,275	278,820	2.7	76.1
1915–16	4,325	192,916	249,355	1.7	77.4
1916–17	5,705	232,491	300,623	1.8	75.1
1917–18	6,466	210,166	270,433	2.4	77.7
1918–19	8,992	184,874	247,932	3.6	74.6
1919–20	6,723	180,948	237,294	2.8	76.3
1920–21	5,557	217,059	287,830	1.9	75.4
1921–22	12,553	140,790	202,722	6.2	69.5
1922–23	11,773	136,558	203,568	5.8	67.1
1923–24	8,022	78,964	112,521	7.1	70.2
1924–25	28,855	154,115	227,825	12.7	67.6
		5 Compresses, List 2			
1916–17	5,840	236,299	340,997	1.7	69.3
1917–18	6,591	211,570	287,222	2.3	73.7
1918–19	9,262	186,859	269,663	3.4	69.3
1919–20	6,873	184,271	259,373	2.7	71.0
1920–21	5,729	220,759	313,056	1.8	70.5
1921–22	12,753	145,165	226,972	5.6	63.9
1922–23	12,014	140,193	224,653	5.3	62.4
1923–24	8,197	80,306	122,652	6.7	65.5
1924–25	29,127	158,353	247,512	11.8	64.0

Exhibit No. A-136—Continued

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
		8 Compresses, List 3			
1917–18	8,763	312,029	425,305	2.1	73.4
1918–19	12,216	274,242	389,131	3.1	70.5
1919–20	9,784	255,148	372,051	2.6	68.5
1920–21	8,553	311,397	452,286	1.9	68.9
1921–22	21,447	240,087	368,744	5.8	65.1
1922–23	31,287	230,215	376,328	8.3	61.2
1923–24	18,666	154,726	236,791	7.9	65.3
1924–25	47,100	270,219	426,873	11.0	63.3
		9 Compresses, List 4			
1918–19	12,752	324,033	461,265	2.8	70.3
1919–20	10,732	288,957	422,979	2.5	68.3
1920–21	12,123	337,089	505,770	2.4	66.6
1921–22	23,108	260,622	403,642	5.7	64.6
1922–23	34,808	259,381	422,727	8.2	61.4
1923–24	20,296	191,176	287,954	7.0	66.4
1924–25	51,412	327,076	501,204	10.3	65.3
		11 Compresses, List 5			
1919–20	10,732	292,885	445,161	2.4	65.8
1920–21	12,123	341,094	535,521	2.3	63.6
1921–22	23,108	266,376	428,770	5.4	62.1
1922–23	34,808	268,698	455,675	7.6	59.0
1923–24	21,251	199,813	312,231	6.8	64.0
1924–25	53,304	339,651	534,646	10.0	63.5

14 Compresses, List 6					
1920–21	29,278	370,511	623,719	4.7	59.4
1921–22	27,796	289,154	492,048	5.6	58.8
1922–23	45,619	292,426	537,644	8.5	54.4
1923–24	24,332	226,588	371,472	6.5	61.0
1924–25	65,795	363,665	623,968	10.5	58.3
[fol. 80-8]					
16 Compresses, List 7					
1921–22	28,848	332,020	578,715	4.9	57.4
1922–23	50,335	354,115	675,976	7.4	52.4
1923–24	25,409	265,673	441,091	5.8	60.2
1924–25	69,525	423,528	727,704	9.6	58.2
18 Compresses, List 8					
1922–23	54,486	376,193	715,435	7.6	52.6
1923–24	26,649	276,801	466,864	5.7	59.3
1924–25	72,491	443,800	772,020	9.4	57.5
21 Compresses, List 9					
1923–24	28,384	383,563	598,461	4.7	64.1
1924–25	78,054	599,032	984,849	7.9	60.8

Lists

List 1.—Helena, Little Rock, Mogehee, Newport.
List 2.—List 1, plus Marianna.
List 3.—Lists 1 and 2, plus Walnut Ridge, Little Rock, Conway.
List 4.—Lists 1 to 3, plus Hope.
List 5.—Lists 1 to 4, plus Magnolia and Batesville.
List 6.—Lists 1 to 5, plus Ashdown, Helena and Morrilton.
List 7.—Lists 1 to 6, plus Blytheville and Earle.
List 8.—Lists 1 to 7, plus Forrest City and Russellville.
List 9.—Lists 1 to 8, plus Blytheville, Searey and West Memphis.

Exhibit No. A-136—Continued

[fol. 80-9] Statement Showing Ratio of Railroad Transit and Railroad Concentrated Cotton Handled by Louisiana Compresses

Year	Bales railroad transit cotton handled	Bales railroad concentrated cotton handled	Total bales handled	Ratio railroad transit cotton handled	Ratio railroad concentrated cotton handled
		1 Compress, List 1			
1913-14	287	11,036	15,826	1.8	69.7
1914-15	136	9,638	14,980	.9	64.3
1915-16	1	7,098	11,254	.0	63.1
1916-17	200	7,120	10,835	1.9	65.7
1917-18	460	7,835	12,501	3.7	62.3
1918-19	1,027	9,648	17,236	6.0	60.0
1919-20	425	7,599	9,954	4.3	76.4
1920-21	1,403	2,676	7,272	19.3	36.80
1921-22	3,094	7,854	15,398	20.1	51.0
1922-23	7,363	6,455	17,978	40.9	35.9
1923-24	13,519	5,573	21,883	61.8	25.5
1924-25	16,576	4,874	28,889	57.4	16.9
		2 Compresses, List 2			
1915-16	2,108	20,536	28,647	7.4	71.7
1916-17	3,220	25,550	34,683	9.3	73.7
1917-18	3,730	20,925	32,875	11.4	63.7
1918-19	1,056	23,804	35,3 -6	3.0	67.3
1919-20	488	15,512	19,773	2.5	78.5
1920-21	1,602	9,076	17,020	9.4	53.3
1921-22	3,767	16,569	27,638	13.3	60.0
1922-23	9,667	19,018	36,213	26.7	52.5
1923-24	18,049	14,510	37,972	47.5	38.2
1924-25	22,945	15,636	49,978	45.9	31.3

		3 Compresses, List 3			
1916–17	3,220	31,058	47,283	6.8	65.7
1917–18	3,730	27,155	48,465	7.7	56.0
1918–19	1,056	26,554	43,935	2.4	60.4
1919–20	488	17,422	25,688	1.9	67.8
1920–21	1,602	9,141	18,852	8.5	48.5
1921–22	3,767	18,264	35,664	10.6	51.2
1922–23	9,667	22,318	45,032	21.4	40.6
1923–24	18,323	18,496	47,145	38.9	39.2
1924–25	28,897	19,747	66,990	43.1	29.5
		4 Compresses, List 4			
1920–21	1,962	14,751	30,933	6.3	47.7
1921–22	4,400	25,685	51,462	8.6	49.9
1922–23	10,527	30,440	63,060	16.7	48.3
1923–24	19,033	25,788	62,277	30.6	41.4
1924–25	29,317	23,510	75,173	39.0	31.3
		5 Compresses, List 5			
1921–22	4,762	27,480	57,872	8.2	47.5
1922–23	10,757	30,887	70,238	10.3	44.0
1923–24	19,075	28,577	70,723	27.0	40.4
1924–25	30,624	24,889	83,326	36.8	29.9
[fol. 80-10]		8 Compresses, List 6			
1922–23	24,719	105,922	188,700	13.1	36.1
1923–24	34,993	125,202	216,467	16.2	57.8
1924–25	52,635	115,181	237,649	22.1	48.5
		9 Compresses, List 7			
1923–24	39,278	133,549	235,627	16.7	56.7
1924–25	69,717	121,741	268,034	26.0	45.4

List 1.—Alexandria.
" 2.—Alexandria and Bunkie.
" 3.—List 2 plus Natchitoches.
" 4.—List 3 plus Minden.
" 5.—List 4 plus Homer.
" 6.—List 5 plus Rayville, Ruston and Shreveport.
" 7.—List 6 plus Monroe.

[fol. 81] **Exhibit No. A-138, Witness J. K. Moore**

Statement Showing Ratio of Railroad Transit and Railroad Concentrated Cotton Handled by Compresses at Greenville, Fort Worth, Dallas and Italy, Texas

Season	Bales railroad transit	Bales railroad concentrated	Total bales received in season	Ratio R. R. transit to total	Ratio R. R. concentrated to total
		Greenville			
1913-14	9,706	111,061	137,130	7.08	80.99
1914-15	6,952	133,523	160,033	4.34	83.44
1915-16	8,311	89,062	113,763	7.31	78.29
1916-17	13,779	132,970	165,993	8.30	80.11
1917-18	20,917	171,215	211,145	9.01	81.09
1918-19	12,141	126,836	161,554	7.52	78.51
1919-20	15,694	119,188	151,928	10.33	78.45
1920-21	24,678	116,996	171,572	14.38	68.19
1921-22	21,096	64,987	101,309	20.82	64.15
1922-23	44,221	72,477	138,343	31.94	52.36
1923-24	61,841	68,284	154,435	40.04	44.22
1924-25	110,596	57,664	190,732	57.99	30.23
		Fort Worth			
1913-14	6,624	44,411	51,850	12.78	85.65
1914-15	13,526	71,003	105,560	12.82	67.26
1915-16	8,606	50,418	75,940	11.33	66.39

1916-17	25,757	63,857	121,664	21.17	52.49
1917-18	25,049	56,183	99,472	25.18	56.48
1918-19	13,664	58,669	78,314	17.45	74.92
1919-20	15,778	90,748	114,114	13.83	79.52
1920-21	17,140	112,422	133,330	12.86	84.32
1921-22	15,083	52,451	70,173	21.49	74.75
1922-23	18,676	45,084	64,765	28.86	69.61
1923-24	30,833	59,150	91,952	33.53	64.33
1924-25	83,155	76,242	161,838	51.38	47.11
		Dallas			
1915-16	14,156	81,503	98,713	14.34	82.57
1916-17	38,399	105,134	145,277	26.43	72.37
1917-18	31,163	98,059	131,589	23.68	74.52
1918-19	17,236	77,639	99,978	17.24	77.66
1919-20	10,866	96,820	114,479	9.49	84.58
1920-21	19,695	71,408	98,250	20.05	72.68
1921-22	16,138	62,003	83,157	19,41	74.56
1922-23	29,076	42,420	73,941	39.32	57.37
1923-24	46,495	50,178	99,793	46.59	50.28
1924-25	85,279	60,737	149,099	57.19	40.74
		Italy			
1913-14	1,732	16,459	26,696	6.49	61.65
1914-15	1,672	27,029	40,671	4.11	66.46
1915-16	2,197	26,014	39,971	5.50	65.08
1916-17	4,411	32,615	46,825	9.42	69.65
1917-18	1,959	18,800	28,473	6.88	66.03
1918-19	488	20,869	28,537	1.71	73,13
1919-20	259	18,869	24,163	1.07	78.09
1920-21	6,050	13,737	35,607	17.00	38.58
1921-22	5,803	14,557	31,445	18.45	46.29
1922-23	10,127	9,532	26,931	37.60	35.40
1923-24	15,385	8,165	35,258	43.63	23.16
1924-25	30,664	8,686	50,872	60.28	17.06

[fol. 82] **Exhibit No. A-139, Witness J. K. Moore**

I. C. C. Docket 14940

Statement Showing Summary of Cotton Handled by Compresses in Texas, Oklahoma, Arkansas, and Louisiana During Seasons 1922-23, 1923-24, and 1924-25

Season 1922-23

State	Bales R. R. transit received	Bales R. R. concentrated received	Bales City or wagon received	Total bales received
Texas	837,986	843,745	666,393	2,348,124
Oklahoma	157,467	308,540	80,646	546,663
Arkansas	54,386	384,359	299,039	737,784
W. Louisiana	24,719	116,219	65,310	206,248
Total	1,074,558	1,652,863	1,111,388	3,838,809
Ratio	28.0	43.0	29.0	100

Season 1923-24

Texas	1,008,106	1,068,753	817,925	2,894,784
Oklahoma	148,798	338,569	83,434	570,801
Arkansas	28,384	389,789	192,997	611,170
W. Louisiana	39,238	133,549	62,820	235,607
Total	1,224,526	1,930,660	1,157,176	4,312,362
Ratio	28.4	44.8	26.8	100

Season 1924-25

Texas	1,565,272	978,057	963,646	3,506,975
Oklahoma	507,267	439,406	197,725	1,144,398
Arkansas	82,533	611,242	318,940	1,012,715
W. Louisiana	69,717	121,741	76,596	268,054
Total	2,224,789	2,150,446	1,5[illegible],907	5,932,142
Ratio	37.5	36.3	26.2	100

Total 3 Seasons

Texas	3,411,364	2,890,555	2,447,964	8,749,883
Oklahoma	813,532	1,086,515	361,805	2,261,852
Arkansas	165,303	1,385,390	810,976	2,361,669
W. Louisiana	133,674	371,509	204,726	709,909
Total	4,523,873	5,733,969	3,825,471	14,083,313
Ratio	32.1	40.7	27.2	100

[fol. 83] **Exhibit No. A-140, Witness J. K. Moore**

I. C. C. Docket 14940

Summary of Inbound and Outbound Loading of Cotton at Compresses in Texas, Oklahoma, Arkansas, and Western Louisiana During Seasons 1922-23, 1923-24 and 1924-25

Season 1922-23

State	Inbound		Outbound	
	Bales unloaded	Cars unloaded	Bales loaded	Cars loaded
Texas	1,541,270	53,798	2,068,050	29,340
Oklahoma	291,522	10,483	349,019	5,550
Arkansas	410,364	14,108	631,552	9,966
W. Louisiana	102,714	3,362	145,464	2,149
Total	2,345,870	81,751	3,194,085	47,005
Bales per car	28.7		68.0	

Season 1923-24

Texas	1,924,953	70,460	2,607,380	37,901
Oklahoma	476,229	17,226	523,390	8,473
Arkansas	351,209	14,586	492,351	8,108
W. Louisiana	132,842	4,772	169,253	2,553
Total	2,885,233	107,044	3,792,379	57,035
Bales per car	27.0		66.5	

Season 1924-25

Texas	2,397,127	87,705	3,277,851	47,693
Oklahoma	946,014	31,911	1,110,178	16,633
Arkansas	634,150	24,837	831,896	13,814
W. Louisiana	148,507	5,517	198,986	2,941
Total	4,125,798	149,970	5,418,911	81,081
Bales per car	27.5		66.8	

Total for 3 Seasons

Texas	5,863,350	211,963	7,953,281	114,934
Bales per car	27.7		69.2	
Oklahoma	1,713,765	59,620	1,982,587	30,656
Bales per car	28.7		64.6	
Arkansas	1,395,723	53,531	1,955,799	31,888
Bales per car	26.6		61.3	
W. Louisiana	384,063	13,651	513,708	7,643
Bales per car	28.1		67.2	
Grand Total	9,356,901	338,765	12,405,375	185,121
Bales per car	27.6		67.0	

[fol. 84] **Exhibit No. A-148**

The Effect on Water-front Compresses

They lose an advantage equal to difference between the present domestic rate and the shipside rate minus their actual expense (plant cost) of delivering cotton from compress to ship.

They do not lose the five cents per bale unloading allowance.

They do not lose the ability to get free second concentration privilege.

They do not lose the ability to bring cotton past interior compresses without penalty.

[fol. 85] **Exhibit No. A. 152**

Tariff No. 7

Effective October 1, 1925

Stevedoring Rates at All Texas Ports

Issued by the Master Stevedores Association of Texas

Section 1.—Rules and Regulations

Item No.	Subject	Rules
1	Steamships	These Rates apply to Deep Sea Steamships only. Sailing Ships, Special Rates. All extra expense incurred will be charged for loading or unloading cargo (not otherwise specified) through doorways or any place that cannot be approached by open hatch.
2	Change of rates	All rates are subject to change as labor conditions warrant.
3	Straight Time Week Days	All labor performed during hours from 8 A. M. to 12 noon, and from 1 P. M. to 5 P. M.
4	Holidays	Armistice Day, Thanksgiving Day, Christmas Day, New Year's Day, Washington's birthday, Texas Independence Day, Fourth of July, Labor Day and Decoration Day.
5	Overtime Sundays	Will be charged at the rate of $1.10 per hour per man on grain cargo; all other cargo (cotton excepted) 90 cents per hour per man.
6	Overtime Weekdays and Holidays	All overtime on general cargo (cotton excepted) will be charged at actual cost during daylight. Fifty cents per hour per man from the hours of 7 P. M. to 6 A. M.

Item No.	Subject	Rules
7	Meal Hours	Any work done during meal hours on any commodity is to be paid double rate of wages.
8	Loading cars	Loading cars or unloading, where direct to or from ship, same rate as Wharf Company's Tariff.
9	Extra Trucking	Extra truckage will be charged at actual cost on all commodities, as follows: general cargo over 150 feet; cotton over 200 feet from hatch.
10	Loading Cotton	110 bales screwed or 267 bales hand stowed per gang of 5 men constitute a day's work. All cotton stowed over the above amount to be paid for as overtime. See Section No. 2, Cotton. Two round bales equal one square.

Approved by Maritime Association.

[fol. 85-1] Switching Assessed by I. G. N. Rr. and Absorbed by M. K. & T., T. & B. V., G. C. & S. F., Gulf Coast Lines Out of Their Line-Haul Rates on Cotton Transported (Local) from Texas to Houston

When Consigned to McFadden's Warehouse on the I. G. N. Rr.

Per Car	$1.80
Cents per bale, Note one	2.8

When Consigned to Houston Compress Company, Long Reach, and to Alexander Sprunt & Company Warehouses on Ship Channel

Per car	$8.10
Cents per bale, Note one	12.5

Switching Assessed by I.-G. N. Rr. and Absorbed by Connecting Lines at Houston on Outbound Movement of Cotton from McFadden's Warehouse and from Houston Compress Company, Long Reach, and Alexander Sprunt & Company Warehouses on Channel at Houston When Such Cotton is Destined to the Southeast or New England Mills

From McFadden's Warehouse on the I.-G. N. Rr.

Per car	$3.15
Cents per bale, Note one	4.8

From Houston Compress Co., Long Reach, and Alexander Sprunt & Co. Warehouses on Ship Channel

Per car	$8.10
Cents per bale, Note one	12.5

Total Switching Charges Assessed by I.-G. N. Rr. and Absorbed by Connecting Lines

To and from McFadden's Warehouse on I.-G. N. Rr.

Per car	$4.95
Per bale, cents, Note one	7.6

To and from Warehouse on Ship Channel on I.-G. N. Rr.

Per car	$16.20
Cents per bale, Note one	.25

Note One: Based on average loading of 65 bales standard cotton to the car.

Tariff references: Switching charges of I.-G. N. Rr. published in I. G. N. Rr. Switching tariff 2345-E, not filed with Interstate Commerce Commission and I.-G. N. Rr. Switching tariff I. C. C.. 2353-L, I. C. C. 885.

Exhibit No. A-152—Continued

[fol. 83-2] Statement of Car Detention and Demurrage Assessed at Galveston on Export Traffic

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
					August, 1920						
364	.....	822	243	.....	601	643	$140.00	2,590	1,250	$140.00	4,013
	2.26 days			2.47 days			4.03 days			3.21 days	
					September, 1920						
586	.....	1,556	722	.....	2,300	665	$80.00	3,193	1,973	$80.00	7,049
	2.66 days			3.19 days			4.80 days			3.57 days	
					October, 1920						
1,723	.....	6,049	1,325	$26.00	5,121	804	$288.00	5,613	3,852	$314.00	16,783
	3.51 days			3.86 days			6.98 days			4.36 days	
					November, 1920						
1,623	$5.00	6,866	1,681	$30.00	8,078	1,078	$2,025.00	11,777	4,382	$2,060.00	26,721

Exhibit No. A-152—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
				Average Detention per Car							
	4.23 days			4.81 days			10.02 days			6.10 days	
				December, 1920							
1,133	.....	3,772	920	$3.00	2,960	689	$1,147.00	8,138	2,742	$1,150.00	14,870
				Average Detention per Car							
	3.33 days			3.22 days			11.81 days			6.02 days	
				Totals and Averages for Period August, 1920, to December, 1920, Inclusive							
5,429	$5.00	19,065	4,891	$68.00	19,060	3,879	$3,080.00	31,311	14,199	$3,753.00	69,436
	3.51 days			3.90 days			8.07 days			4.86 days	
[fol. 85-3]											
				August, 1921							
584	.....	1,552	606	.....	1,749	778	$24.00	3,095	1,968	$24.00	6,396
				Average Detention per Car							
	2.66 days			2.89 days			3.98 days			3.25 days	

				September, 1921							
981	.....	3,430	768	$22.00	2,470	1,236	$84.00	5,689	2,985	$106.00	11,589
				Average Detention per Car							
	3.50 days			3.22 days			4.00 days			3.88 days	
				October, 1921							
2,087	.....	6,872	1,017	$20.00	3,835	1,162	$234.00	6,140	4,266	$254.00	16,847
				Average Detention per Car							
	3.29 days			3.77 days			5.28 days			3.95 days	
				November, 1921							
1,448	.....	6,952	606	$27.00	2,636	908	$316.00	4,279	2,962	$343.00	13,867
				Average Detention per Car							
	4.80 days			4.35 days			4.71 days			4.68 days	
				December, 1921							
606	$81.00	2,901	670	$2.00	2,040	784	$579.00	4,283	2,149	$472.00	9,230
				Average Detention per Car							
	4.17 days			3.05 days			5.46 days			4.30 days	
				Totals and Averages for Period August, 1921, to December, 1921, Inclusive							
5,795	$81.00	21,707	3,667	$71.00	12,736	4,868	$1,037.00	23,486	14,330	$1,189.00	57,929
	3.75 days			3.47 days			4.82 days			4.04 days	
[fol. 85-4]											
				August, 1922							
56	.....	83	296	.....	572	1,238	$176.00	4,670	1,590	$176.00	5,825

Exhibit No. A-152—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
	Average Detention per Car										
	1.48 days			1.93 days			3.77 days			3.35 days	
					September, 1922						
477	.....	1,104	755	.....	1,816	1,559	$1.00	4,870	2,791	$1.00	7,790
	Average Detention per Car										
	2.31 days			2.41 days			3.12 days			2.79 days	
					October, 1922						
1,113	.....	3,395	662	$6.00	2,264	1,697	$55.00	6,621	3,472	$61.00	12,280
	Average Detention per Car										
	3.05 days			3.42 days			3.94 days			3.54 days	
					November, 1922						
1,221	.....	5,210	509	$13.00	1,985	1,038	$142.00	4,459	2,768	$155.00	11,654
	Average Detention per Car										
	4.27 days			3.90 days			4.30 days			4.21 days	
					December, 1922						
511	.....	1,472	264	$12.00	791	1,039	$92.00	3,816	1,814	$104.00	6,079

							Average Detention per Car				
	2.88 days			2.99 days			3.67 days			3.35 days	
							Totals and Averages for Period August, 1922, to December, 1922, Inclusive				
3,378	.....	11,264	2,486	$31.00	7,428	6,571	$466.00	24,436	12,435	$497.00	43,128
	3.–3 days			2.99 days			3.72 days			3.47 days	
[fol. 85-5]											
							August, 1923				
102	.....	124	411	.....	619	957	$30.00	2,838	1,470	$30.00	3,581
							Average Detention per Car				
	1.31 days			1.51 days			2.97 days			2.44 days	
							September, 1923				
564	.....	952	638	.....	1,241	1,158	$6.00	3,225	2,360	$6.00	5,418
							Average Detention per Car				
	1.69 days			1.95 days			2.78 days			2.30 days	
							October, 1923				
729	.....	1,344	879	.....	1,841	2,378	$58.00	6,902	3,986	$58.00	10,067
							Average Detention per Car				
	1.84 days			2.09 days			2.90 days			2.53 days	
							Totals and Averages for Period August, 1923, to October, 1923, Inclusive				
1,395	.....	2,420	1,928	.....	3,701	4,493	$94.00	12,965	7,816	$94.00	19,086
	1.73 days			1.92 days			2.89 days			2.44 days	

Exhibit No. A-152—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
[fol. 85-6]			Statement of Car Detention and Demurrage Assessed at Galveston on Cotton Taking Local Delivery								
	1920			1921		August	1922			1923	
395	$127.00	1,006	1,486	$1,079.00	4,340	1,112	$41.00	2,416	1,907	$216.00	3,144
						Average Detention per Car					
	2.55 days			2.92 days			2.17 days			1.57 days	
						September					
1,726	$624.00	4,741	2,148	$390.00	6,004	3,968	$792.00	10,138	5,103	$1,658.00	12,088
						Average Detention per Car					
	2.75 days			2.80 days			2.55 days			2.37 days	
						October					
3,031	$1,434.00	10,552	3,568	$1,063.00	12,116	5,734	$4,112.00	19,338	5,854	$6,217.00	18,080
						Average Detention per Car					
	3.48 days			3.40 days			3.37 days			3.09 days	
						November					
3,205	$4,232.00	14,583	2,890	$4,824.00	12,227	5,097	$13,461.00	24,478	....	.....	....

				Average Detention per Car							
	4.55 days			4.23 days			4.80 days		....	.....	....
				December							
2,398	$2,191.00	9,160	2,079	$878.00	6,264	2,301	$846.00	6,719	....	.....	....
				Average Detention per Car							
	3.82 days			3.01 days			2.92 days		....	.....	....
				Totals and Averages for Periods Shown Above							
10,755	$8,608.00 4.89 days	40,042	17,171	$8,234.00 3.36 days	40,951	18,212	$19,252.00 3.46 days	63,089	12,954	$8,091.00 2.57 days	33,312

[fol. 85-7]

Item No.	Subject	Demurrage
1730	Through bills of Lading.	The lines parties hereto and connecting carriers will issue through bills of lading only in connection with steamship lines or ships whose agents have signed agreements to pay demurrage charges at Beaumont, Galveston, Houston, Orange, and Texas City, Texas, in accordance with demurrage rules and rates legally published and filed with the Interstate Commerce Commission.

[fol. 85-8]

Period covered	Average detention
September 1, 1914 to August 31, 1915	5.858
September 1, 1915 to August 31, 1916	6.237
September 1, 1916 to August 31, 1917	5.436
August 1, 1920 to December 31, 1920	4.86
August 1, 1921 to December 31, 1921	4.04
August 1, 1922 to December 31, 1922	3.47
August 1, 1923 to December 31, 1923	2.79
August 1, 1924 to December 31, 1924	3.55
August 1, 1925 to December 31, 1925	2.37

Pages 271-273 of record.

[fol. 85-9] Statement of Rates on Cotton and Short-line Distances via Not More Than Three Railroads from Representative Points in Arkansas to Galveston and New Orleans

Rates Shown Apply for Domestic Depot Delivery

From Arkansas	To Galveston, Texas			To New Orleans, La			
	Dist. miles	Route	Rates cents cwt.	Dist. miles	Route	Rates, cents cwt. Rail	Rail & barge
Ashdown	371	56	87	400	19	87	77½
Atlheimer	472	6	90	429	48	87	75½
Benton	478	3	90	436	49	87	77½
Bald Knob	559	3	91	486	24	87	75½
Brinkley	529	6	91	463	26	87	75½
Bigelow	531	10	95½	504	49	93½	82
Camden	392	6	87	369	50	87	77½
Clarendon	514	6	91	476	28	87	75½
Conway	532	3	96½	481	51	93½	82
Cotton Plant	543	12	91	472	26	87	75½
Dermott	405	7	80	353	28	76½	67
De Queen	406	56	96½	434	19	96½	77½
El Dorado	369	10	89	330	49	87	77½
Eudora	416	7	81½	317	28	76½	67
Fordyce	418	10	89	380	49	87	77½
Felsenthal	365	7	90	319	28	87	77½
Forrest City	526	7	92	438	26	87	75½

Exhibit A-152—Continued

From Arkansas	To Galveston, Texas			To New Orleans, La			
	Dist. miles	Route	Rates cents cwt.	Dist. miles	Route	Rates, cents cwt. Rail	Rail & barge
Ft. Smith	544	56	96½	573	19	96½	85
Gurdon	421	3	87	403	50	87	77½
Glenwood	469	3	99	450	50	97	87½
Hope	389	3	87	390	32	87	77½
Halley	412	7	80½	347	28	76½	67
Hermitage	420	10	90	373	49	87	77½
Helena	504	7	81½	453	28	76½	67
Higginson	547	3	91	497	24	87	75½
Kimball	369	7	80	342	28	76½	67
Little Rock	501	3	90	463	49	87	75½
Lake Village	401	7	80½	333	28	76½	67
Malvern	458	3	89	433	52	87	77½
McNeil	361	6	87	369	33	87	77½
Montrose	390	7	80	345	28	76½	67
McGehee	413	7	80½	376	28	76½	67
Marianna	508	7	81½	445	24	76½	65
Mellwood	466	7	80½	415	28	76½	67
Magnolia	379	42	87	353	43	87	77½
Mulberry	578	44	96½	603	51	96½	85
Morrillton	551	3	96½	513	51	93½	82

Mansfield	535	14	96½	559	54	96½	85
Mesa	546	10	90	502	26	87	75½
Mena	459	56	96½	488	19	96½	77½
Newport	585	3	91	512	24	87	75½
Osceola	604	9	92	446	29	87	75½
Ozark	592	13	96½	588	51	94½	83
Ola	569	10	95½	539	49	93½	82
Paris	594	45	96½	618	46	96½	85
Pine Bluff	463	6	90	417	28	87	77½
Russellville	577	3	96½	538	51	93½	82
Stamps	344	6	87	357	53	87	77½
Stuttgart	494	6	90	452	55	87	75½
Tinsman	404	10	89	361	49	87	77½
Van Buren	552	17	96½	577	36	96½	85
Wheatley	539	12	92	458	26	87	75½
Blytheville	621	9	92	463	29	87	75½
Earle	561	7	92	421	24	87	75½
[fol. 85-10] Fair Oaks	555	6	92	455	24	87	75½
Hoxie	621	3	92	513	29	87	75½
Heth	544	11	92	420	26	87	75½
Jonesboro	603	6	92	470	29	87	75½
Jelks	579	3	91	466	24	87	75½
Nettleton	583	7	92	467	28	87	75½
Paragould	602	7	92	502	24	87	75½
Turrell	575	9	90½	417	29	85½	74
Tyronza	585	9	91	427	29	86	74½

Exhibit A-152—Continued

From Arkansas	To Galveston, Texas			To New Orleans, La			
	Dist. miles	Route	Rates cents cwt.	Dist. miles	Route	Rates, cents cwt. Rail	Rail & barge
Wynne	541	7	92	441	24	87	75½
Wilson	594	9	92	435	29	87	75½
Walnut Ridge	623	3	92	494	29	87	75½
Average	499		90	446		87	76
Memphis, Tenn.			92			76½	65
Vicksburg, Miss.			97			65½	56

Tariff references:
St. Louis-San Francisco Ry. Co., ICC 8481.
St. Louis-Southwestern Ry. Co., ICC 4221.
Missouri Pacific Ry., ICC A-6572.
C. R. I & P. Ry. Co., ICC C-11365.
L. & A. Ry. ICC 1255.

Mississippi Warrior Service Tariff 65-C, Wm. Hough's ICC A-97, and all water tariff 1-F, not filed with I. C. C.

Export shipside rates are 5c per 100 pounds higher than those from domestic or depot delivery.

J. H. Glenn's I. C. C. 525.

[fol. 85-11] Statement showing the present local or depot delivery rates applying on cotton, compressed in transit at carriers expense, from representative points in Louisiana to Galveston, Texas and New Orleans Louisiana. The rates to shipside for export or coastwise movement beyond are 5¢ per 100 pounds higher than the rates shown herein.

Points in Louisiana on and east of the Missouri Pacific Railroad running from Kimball, Arkansas to Alexandria,, La., on and east of the Southern Pacific Railroad running from Alexandria, Louisiana to LaFayette, Louisiana.

From Louisiana	To Galveston, rates, cts., cwt.	To New Orleans, rates, cts., cwt.
Lake Providence	85	76½
Tallulah	85	76½
Delta	85	76½
St. Joseph	85	74
Vidalia	85	65½
Collinston	80	76½
Rayville	85	76½
Delhi	85	76½
Baskin	85	76½
Monroe	80	76½
Clarks	80	76½
Grant	76½	74
Pollock	76½	74
Alexandria	74	74
Lamourie	74	74
Mansura	74	67½
Bunkie	74	67½
Melville	74	63½
Port Barre	67½	60½
Opelousas,	97½	67½
Vicksburg, Miss	97	65½

[fol. 85-12 Points in Louisiana west of the Missouri Pacific Railroad, running from Kimball, Arkansas, to Alexandria, La., and west of the Southern Pacific Railroad from Alexandria, Louisiana, to LaFayette, Louisiana

From Louisiana	To Galveston, rates, cts., cwt.	To New Orleans, rates, cts., cwt.
Bastrop	85	80
Raile	85	80
Randolph	86½	86
Bernice	80	80
Ruston	80	80
Jamesboro	80	80
Dodson	80	80
Winnfield	76½	76½
Packton	74	74
Haynesville	86½	86½
Homer	86½	86½
Athens	86½	86½
Gibsland	80	80
Arcadia	80	80
Brenville	80	80
Chestnut	80	80
Hagen	76½	76½
Natchitoches	77	77
Cypress	77	77
Aloha	76½	76½
Colfax	74	74
Boyce	77	77
Springhill	81	81
Minden	80	80
Sibley	80	80
[fol. 85-13] Shreveport	80	80
Keachie	80	80
Logansport	80	80
Mansfield	80	80
Coushatta	76½	76½

Tariff references:

Rates to Galveston and New Orleans published in:

L. R. & N. Co., I. C. C. A-937.
C. R. I. & P. Ry. Co. ICCC 8605.
M. L. & T. Rr. & S. S. Co. ICC 4500-B.
L. & S. Ry. Co., ICC 1276.
V. S. & P. Ry. Co., ICC B-141.
J. H. Glenn's ICC A-525.
T. & P. Ry. Co. ICC 3220.
Houston & Shreveport ICC 1545.
Mo. Pac. Rr. Co., ICC A-6572.
Gulf Coast Lines ICC A-756 and A-735.
K. C. S. Ry. I. C. C. 4457.
F. A. Leland's I. C C. 1619.

Exhibit A-152—Continued

[fol. 85-14] Comparative statement showing the total terminal charges (switching, unloading and wharfage) assessed at the ports of Galveston and Houston, Texas, and New Orleans, Louisiana, on cotton moving for export and coastwise through said ports

Export

	Galveston, Texas, cents, cwt.		Houston, Texas, cents, cwt.		New Orleans, La., cents, cwt.
Switching, $4.05 per car	(a)1.19	$8.10 per car	(a)2.37	$6.30 per car	(a)1.85
Unloading, 5½¢ per bale	(b)1.05	4¢ per bale	(b).76	(c) 6¢ per bale	(b)1.14
Wharfage	2		2		75
					Note two
Total	4.24		5.13		3.74

Coastwise

Southern Pacific SS. Lines

	Galveston, Texas, cents, cwt.		Houston, Texas, cents, cwt.		New Orleans, La., cents, cwt.
Switching, $3.15 per car	(a).92	$8.10 per car	(a)2.37	$6.30 per car	(a)1.85
Unloading, 4¢ per bale	(b).76	4¢ per bale	(b).76	(c) 6¢ per bale	(b)1.14
Wharfage, Note one.				Note two	.75
Total	1.68		3.13		3.74

(a) Based on average loading 65 bales, 34125 lbs. to the car.
(b) Based on average weight 525 lbs. per bale.
(c) Charge for unloading cotton at New Orleans on a private contract basis.

[fol.

Vol. 85-15] Comparative statement showing separately the switch
minal charges, including switching, handling, and wharfage at
import through those respective ports under equalized rates t

Commodity	Average loading, lbs.	Galveston, Texas Switching	
		Per car	Cents, cwt.
otton	34,125	$4.05	a1.19
lour	60,000	4.05	.67
arafine wax	50,000	4.05	.81
oap in box	40,000	4.05	1.01
ard substi.	40,000	4.05	1.01
ig lead	56,000	4.05	.72
arbon black	30,000	4.05	1.35
ice (clean)	50,000	4.05	.81
agging for baling cotton	30,000	4.05	1.35
on & Steel articles	50,000	4.05	.81
ews print paper	40,000	4.05	1.01
isal	27,000	4.05	1.5
reen coffee	30,000	4.05	1.35

A. Based on loading of 65 bales of cotton to car. B. Based
C. Published handling charges at New Orleans. Loading
D. Based on 250 lbs. per bale—the published charge is 15¢ p
Tariff references: A. C. Fonda's ICC 175, W. P. Emerson

witching charges per car, as well as in cents per 100 pounds, the handling charges, the wharfage charges, as well as the total ter-
e at Houston, and Galveston, Texas and New Orleans, Louisiana on various representative commodities moving for export and
tes to and from shipside

Export

cwt.	Handling, cents, cwt.	Wharfage, cents, cwt.	Total terminal expense, cents, cwt.	New Orleans, Louisiana Switching		Handling, cents, cwt.	Wharfage, cents, cwt.	Total terminal expense, cents, cwt.	Houston, Texas		Handling, cents, cwt.	Wharfage, cents, cwt.	Total terminal expense, cents, cwt
				Per car	Cents, cwt.				Per car.	Cents, cwt.			
9	b1.05	2¢	4.24	$6,30	a1.82	c5¢	.75	7.60	$8.10	a2.37	76	2	5.13
7	1½	1½	3.67	6.30	1.05	3½	.75	5.30	8.10	1.35	1½	1½	4.35
1	2¼	1¾	4.81	6.30	1.26	c3¼	.75	5.36	8.10	1.62	2¼	1¾	5.62
1	2	2½	5.51	6.30	1.58	c3½	.75	5.83	8.10	2.03	2	2½	6.53
1	1½	1½	4.01	6.30	1.58	c3½	.75	5.83	8.10	2.03	1½	1½	5.03
2	1½	1¾	3.97	6.30	1.13	c2½	.75	4.38	8.10	1.45	1½	1¾	4.7
5	2¼	2½	6.1	6.30	2.10	c5¢	.75	7.85	8.10	2.70	2¼	2½	7.45
1	1½	1½	3.81	6.30	1.26	c3½	.75	5.51	8.10	1.62	1½	1½	4.62

Import

5	1½	1¾	4.1	$8.10	a2.37	b76	2	5.13	$6.30	a1.85	c5¢	.75	7.60
1	2.75	1¼	4.81	6.30	1.26	c3½	.75	5.51	8.10	1.62	2.75	1¼	5.62
1	2¢	1¼	4.26	6.30	1.58	c3½	.75	5.83	8.10	2.03	2	1¼	5.28
	2¢	1¼	4.75	6.30	2.3	d6.	.75	9.05	8.10	2.10	2	1¼	5.35
5	2¢	1¼	4.6	6.30	2.10	c3½	.75	6.35	8.10	2.70	2	1¼	5.95

Based on average weight of 525 lbs. per bale.
ıding and unloading charges not separately shown.
15¢ per bale.
erson's ICC 88, Gulf Coast Lines ICC A-672, Galveston Wharf Company ICC 28.

NOTE ONE.—No wharfage charges are assessed against cotton moving coastwise in connection with the Morgan Line or Mallory Line. The steamship lines take care of same.

NOTE TWO.—On export cotton handled over Illinois Central Rr. piers at New Orleans no wharfage charge is assessed.

Tariff references:
A. C. Fonda's I. C. C. 175.
W. P. Emerson's I. C. C. 88.
I.-G. N. Rr. I. C. C. 885.
Gulf Coast Lines I. C. C. A-672.
Galveston Wharf Co., I. C. C. 28.

(Here follows side folio page 85-15)

[fol. 86] **Exhibit No. A-156**

Galveston Cotton Compress and Warehouse Company, Galveston, Texas

Following is cost per bale of delivering to and loading cars at the plant of the Galveston Cotton Compress & Warehouse Company, Galveston, Texas.

Delivering greatest distance, 1,050 feet, .13 3/10 cents per b/c (20 men trucking 60 bales of cotton per hour, wages 40¢ per hour).

Delivering shortest distance, 25 feet, .05 3/10 cents per b/c (8 men trucking and handling 60 bales of cotton per hour, wages .40¢ per hour).

Delivery to Trucks or Drays

Delivering greatest distance, 525 feet, .06 6/10 cents per b/c (10 men trucking and handling 60 bales of cotton per hour, wages .40¢ per hour).

Delivery shortest distance, 30 feet, .04¢ per bale cotton (6 men trucking and handling 60 bales of cotton per hour, wages .40¢ per hour).

The above costs are for labor only and does not include any overhead expense or depreciation on equipment and facilities used in performing the service.

[fol. 87] **Exhibit No. A-176**

I. C. C. Dockets Nos. 14940, 13991, and 11965. R. C. T. Docket No. 2256

Composite statement showing: (1) the total number of bales flat (uncompressed) cotton originating Texas points and delivered at Galveston and Houston, Texas, during the 1923-24 and 1924-25 cotton seasons; (2) the number of such flat bales that moved from and past compresses; (3) the percentage of flat cotton that moved from and past compresses; and (4) the bales moved from and past compresses that originated points under 160 miles, over 160 miles and over 210 miles from the Ports.

	1923-24	1924-25
(1) Total flat (uncompressed) Bales Delivered	490,008	559,735
(2) Number of such flat bales moved from and past compresses	393,476	434,793
(3) Per cent of Total	80.3%	77.6%
(4) Bales moved flat from and past compresses:		
(a) From points where "flat" rate is lower than "C. I. T." rate (160 miles and less)	107,139	127,097
(b) From points where "flat" and "C. I. T." rates are the same (Over 160 miles)	286,337	307,696
(c) From maximum Rate Territory (Over 210 miles)	218,576	233,958
(5) Percentage of flat cotton moving from and past compresses that originates in maximum rate territory	55.5%	53.8%

(c) Is included in (b).

[fol. 88]

Exhibit No. A-186

I. C. C. Dockets 11965, 13,991, and 14940

Statement of Car Detention at Galveston on Export Traffic for the Period August 1st, 1924, to July 31st, 1925

All Railroads

Cotton moving under through bills of lading				Cotton moving under local bills of lading marked for export		
No. of cars	Total detention	Average detention	Months	No. of cars	Total detention	Average detention
62	72	1.16	August, 1924	296	356	1.20
328	519	1.58	September, 1924	770	1,517	1.97
996	2,184	2.19	October, 1924	818	2,204	2.69
1,172	3,689	3.15	November, 1924	485	1,866	3.85
1,100	5,036	4.58	December, 1924	583	2,304	3.95
969	5,110	5.27	January, 1925	468	1,958	4.18
566	1,731	3.06	February, 1925	268	733	2.74
235	638	2.71	March, 1925	303	884	2.92
88	224	2.55	April, 1925	176	557	3.16
29	83	2.86	May, 1925	137	259	1.89
11	27	2.45	June, 1925	38	77	2.03
38	97	2.55	July, 1925	19	27	1.42
5,594	19,410	3.47	Totals	4,361	12,642	2.90

[fol. 89] Statement of Car Detention at Galveston on Shipments of Cotton Moving under Through Export Bills of Lading for the Months of October, November, and December, 1924

Roads	No. of cars	Total detention	Average detention
October, 1924			
G. C. & S. F.	178	339	1.90
G. H. & S. A.	283	664	2.35
I.-G. N.	311	724	2.33
M. K. T.	224	457	2.04
Totals	996	2,184	2.19
November, 1924			
G. C. & S. F.	256	777	3.04
G. H. & S. A.	221	734	3.32
I.-G. N.	361	1,216	3.37
M. K. T.	334	962	2.88
Totals	1,172	3,689	3.15
December, 1924			
G. C. & S. F.	256	1,215	4.75
G. H. & S. A.	235	976	4.15
I.-G. N.	290	1,308	4.51
M. K. T.	319	1,537	4.82
Totals	1,100	5,036	4.58
Recapitulation			
G. C. & S. F.	690	2,331	3.38
G. H. & S. A.	739	2,374	3.21
I.-G. N.	962	3,248	3.38
M. K. T.	877	2,956	3.37
Totals	3,268	10,909	3.34

[fol. 90] Statement of Car Detention at Galveston on Shipments of Cotton Moving under Through Export Bills of Lading for the Months of October, November. and December, 1925

Roads	No. of cars	Total detention	Average detention
October, 1925			
G. C. & S. F.	131	306	2.34
G. H. & S. A.	152	321	2.11
I.-G. N.	174	286	1.64
M. K. T.	138	322	2.33
Totals	595	1,235	2.08
November, 1925			
G. C. & S. F.	168	311	1.85
G. H. & S. A.	178	358	2.01
I.-G. N.	189	281	1.49
M. K. T.	166	389	2.34
Totals	701	1,339	1.91
December, 1925			
G. C. & S. F.	64	132	2.06
G. H. & S. A.	148	360	2.43
I.-G. N.	127	262	2.06
M. K. T.	111	327	2.95
Totals	450	1,081	2.40
Recapitulation			
G. C. & S. F.	363	749	2.06
G. H. & S. A.	478	1,039	2.17
I.-G. N.	490	829	1.69
M. K. T.	415	1,038	2.50
Totals	1,746	3,655	2.09

[fol. 91]

Exhibit No. A-187

I. C. C. Dockets 11965, 13991, and 14940

Statement of Car Detention at Houston on Export Shipments of Cotton for the Period August 1st, 1924, to July 31st, 1925

All Railroads

Cotton moving under through export bills of lading				Cotton moving under local bills of lading marked for export		
No. of cars	Total detention	Average detention	Months	No. of cars	Total detention	Average detention
6	6	1.00	August, 1924	9	11	1.22
102	163	1.60	September, 1924	66	94	1.42
116	188	1.62	October, 1924	35	56	1.60
206	457	2.22	November, 1924	38	68	1.79
205	825	4.02	December, 1924	47	109	2.32
185	414	2.24	January, 1925	43	117	2.72
134	320	2.39	February, 1925	8	17	2.12
127	246	1.94	March, 1925	18	28	1.56
52	105	2.02	April, 1925	3	5	1.67
18	39	2.17	May, 1925	2	2	1.00
3	7	2.33	June, 1925	6	13	2.17
36	66	1.83	July, 1925	3	3	1.00
1,190	2,836	2.38	Totals	278	523	1.88

[fol. 91-1] I. C. C. Dockets 11965, 13991, and 14940

Statement of Car Detention at Houston on Shipments of Cotton Moving under Through Export Bills of Lading for the Months of October, November, and December, 1924

Roads	No. of cars	Total detention	Average detention
October, 1924			
B. S. L. & W.	..	..	....
G. C. & S. F.	29	45	1.55
G. H. & S. A.	36	46	1.28
I.-G. N.	14	32	2.29
M. K. T.	35	58	1.66
St. L. B. & M.	..	..	....
T. & B. V.	2	7	3.50
Totals	116	188	1.62
November, 1924			
B. S. L. & W.	3	6	2.00
G. C. & S. F.	36	90	2.50
G. H. & S. A.	37	58	1.57
I.-G. N.	38	71	1.87
M. K. T.	59	134	2.27
St. L. B. & M.	..	..	....
T. & B. V.	33	98	2.97
Totals	206	457	2.22
December, 1924			
B. S. L. & W.	..	..	....
G. C. & S. F.	53	220	4.15
G. H. & S. A.	24	39	1.62
I.-G. N.	42	176	4.19
M. K. T.	62	301	4.85
St. L. B. & M.	..	..	....
T. & B. V.	24	89	3.71
Totals	205	825	4.02

Recapitulation

Roads	No. of cars	Total detention	Average detention
B. S. L. & W.	3	6	2.00
G. C. & S. F.	118	355	3.01
G. H. & S. A.	97	143	1.47
I.-G. N.	94	279	3.07
M. K. T.	156	493	3.16
St. L. B. & M.	..	..	....
T. & B. V.	59	194	3.29
Totals	527	1,470	2.79

[fol. 91-2] I. C. C. Dockets 11965, 13991, and 14940

Statement of Car Detention at Houston and Shipments of Cotton Moving under Through Export Bills of Lading for the Months of October, November, and December, 1925

Roads	No. of cars	Total detention	Average detention
October, 1925			
B. S. L. & W.	..	..	....
G. C. & S. F.	37	106	2.86
G. H. & S. A.	48	54	1.12
I.-G. N.	69	91	1.32
M. K. T.	62	116	1.87
St. L. B. & M.	..	..	....
T. & B. V.	8	14	1.75
Totals	224	381	1.70
November, 1925			
B. S. L. & W.	..	..	....
G. C. & S. F.	24	51	2.12
G. H. & S. A.	21	30	1.43
I.-G. N.	31	55	1.77
M. K. T.	38	79	2.08
St. L. B. & M.	..	..	....
T. & B. V.	5	11	2.20
Totals	119	226	1.90

Roads	No. of cars	Total detention	Average detention
December, 1925			
B. S. L. & W.	..	..	....
G. C. & S. F.	22	80	3.64
G. H. & S. A.	23	25	1.09
I.-G. N.	10	21	2.10
M. K. T.	40	108	2.70
St. L. B. & M.	..	..	....
T. & B. V.	17	43	2.53
Totals	112	277	2.47
Recapitulation			
B. S. L. & W.	..	..	....
G. C. & S. F.	83	237	2.86
G. H. & S. A.	92	109	1.18
I.-G. N.	110	167	1.52
M. K. T.	140	303	2.16
St. L. B. & M.	..	..	....
T. & B. V.	30	68	2.27
Totals	455	884	1.94

(Here follows Exhibit A-189, marked side folio pages 92, 92-1, 92-2, 92-3, 92-4, 92-5, and 92-6)

I. C. C. DOCKET 14940 ET AL

STATEMENT S

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EFFECT

FIGURES SHOWN HEREIN, EXCEPT WHERE INDIC

HOUSTON, TEXAS
JUNE 1, 1926

I. C. C. DOCKET 14940 ET AL

EXHIBIT NO. A 189
WITNESS Lee Rud
8 PAGES

STATEMENT SHOWING CERTAIN INFORMATION AS TO RECEIPT AND DISPOSITION OF COTTON AT HOUSTON AND GALVESTON, TEXAS SEASON 1924-1925 ALSO THE EFFECT UPON CARRIERS' REVENUE OF THE "ONE RATE" PLAN

FIGURES SHOWN HEREIN, EXCEPT WHERE INDICATED TO THE CONTRARY, WERE OBTAINED FROM THE RECORDS OF THE CARRIERS

HOUSTON, TEXAS
JUNE 1, 1926

PLANOGRAPHED BY JOHN S. SWIFT CO. ST. LOUIS

I. C. C. DOCKET 14940 ET AL.

EXHIBIT NO. D-189
WITNESS Bird

STATEMENT SHOWING THE NUMBER OF BALES OF COTTON RECEIVED AT HOUSTON AND GALVESTON DURING THE SEASON 1924-1925, SEGREGATED BY STATES OF ORIGIN.

FROM	AT HOUSTON	AT GALVESTON	TOTAL
Texas	2,267,333	2,961,850	5,229,183
Arkansas	24,802	51,128	75,930
Oklahoma	294,461	622,867	917,328
Louisiana	22,506	49,307	71,813
California	4,055	11,667	15,722
Arizona	5,056	23,386	28,442
New Mexico	17,174	18,136	35,310
Colorado	9	-	9
Mississippi	797	543	1,340
Georgia	7	-	7
Missouri	-	30	30
New York	45	-	45
Tennessee	6	137	143
Total	2,636,251	3,739,051	6,375,302
Less reshipments from Houston to Galveston	534,323		534,323
	2,101,928		5,840,979

STATEMENT SHOWING THE NUMBER OF BALES OF COTTON RE-HANDLED AT HOUSTON AND GALVESTON TEXAS DURING THE SEASON 1924-25 BY EACH MODE OF TRANSPORTATION VIZ., DRAY, BARGE AND CARS.

BY	AT HOUSTON	AT GALVESTON
Barge	x 90,542	None.
Cars	(x)906,000	None.
Dray	#	(.) 1,096,784

Figures not available as record is not kept by drayage companies.
x Furnished by the Barge Lines. (5,802 from one waterfront plant to another)
(.)Furnished by the Dray Lines
(x) 763,880 bales from back of waterfront facilities
142,120 bales from one waterfront facility to another waterfront facility.
906,000

92-1

EXHIBIT NO._____

I. C. C. DOCKET 14940 ET AL.

WITNESS_____
Page 3.

STATEMENT SHOWING THE NUMBER OF BALES OF COTTON HANDLED AT HOUSTON, TEXAS, SEASON 1924-1925

SEPARATING COTTON ORIGINATING IN TEXAS FROM OTHER COTTON; COTTON HANDLED AT WATERFRONT FACILITIES FROM COTTON HANDLED BACK OF WATERFRONT:

ALSO NUMBER OF BALES OF TEXAS COTTON GIVEN FIRST CONCENTRATION AT INTERIOR POINTS AND COTTON RESHIPPED FROM HOUSTON BY RAIL.

		A	B	C
1.	a. Number bales Texas cotton delivered to compresses and warehouses back of waterfront on intrastate rate		1,223,783	
	b. Number bales Texas cotton delivered to compresses and warehouses on waterfront on intrastate rate		984,625	
	c. Total number bales Texas cotton delivered on intrastate rate			2,208,408
	d. Percent (c) delivered back of waterfront	55.415		
	e. Percent (c) delivered on waterfront	44.585		
2.	a. Number bales Texas cotton on through export bills of lading		56,814	
	b. Number bales Texas cotton on through coastwise bills of lading		2,111	
			58,925	
3.	a. Grand total Texas cotton delivered at Houston by rail			2,267,333
	b. Grand total cotton from all states delivered at Houston by rail			2,636,251
	c. Percent of total cotton arriving Houston by rail which originated in Texas	85.6		
4.	a. Number bales Texas cotton accorded first concentration at an interior point and delivered at port on intrastate rate		274.175	
	b. Proportion delivered at plants back of waterfront (55.415 percent of 274,175)		151,934	
	c. Proportion delivered at plants on waterfront (44.585 percent of 274,175)		122,241	
5.	a. Number of bales cotton from all states reshipped from Houston to the Southeast, Pacific Coast, New Orleans and Galveston		838,373	
	b. Texas cotton included in 5.a (85.6 percent of 838,373)		717,647	
6.	a. Re-Shipments from Houston to the Southeast, Pacific Coast and New Orleans		304,050	
	b. Texas cotton included in 6.a (85.6 percent of 304,050)		260,267	
	c. Proportion of 6.b from plants back of waterfront (55.415 percent of 260,267)		144,227	
	d. Proportion of 6.b from plants on waterfront (44.585 percent of 260,267)		116,040	
7.	a. Re-shipments to Galveston		534,323	
	b. Texas cotton included in 7.a (85.6 percent of 534,323)		457,380	
	c. Proportion of 7.b from plants back of waterfront (55.415 percent of 457,380)		253,457	
	d. Proportion of 7.b from plants on waterfront (44.585 percent of 457,380)		203,923	

		D	E	F	G
		HANDLED BACK OF WATERFRONT		HANDLED AT WATERFRONT	
8.	Rail receipts-Texas cotton moving on intrastate rate-1.a & 1.b		1,223,783		984,625
9.	Deduct Texas cotton concentrated at interior-4.b & 4.c	151,934		122,241	
10.	Deduct Texas cotton re-shipped to interstate points by rail-6.c & 6.d	144,227		116,040	
11.	Deduct Texas cotton re-shipped to and via Galveston-7.b	253,457		203,923	
	Total.	-------	549,618	-------	442,204
12.	Number bales Texas cotton finally exported or re-shipped coastwise from Houston by owners independent of carriers		674,165		542,421

NOTE: Figures making reference to note are taken from the annual report of the Houston Cotton Exchange.

92-2

EXHIBIT NO._____

I. C. C. DOCKET 14940 ET AL.

WITNESS_____

STATEMENT SHOWING THE NUMBER OF BALES OF COTTON HANDLED AT GALVESTON, TEXAS, SEASON 1924-1925

SEPARATING COTTON ORIGINATING IN TEXAS FROM OTHER COTTON; COTTON HANDLED AT WATERFRONT FACILITIES AND COTTON HANDLED BACK OF THE WATERFRONT;
ALSO NUMBER OF BALES OF TEXAS COTTON GIVEN FIRST CONCENTRATION AT INTERIOR POINTS AND COTTON RE-SHIPPED FROM GALVESTON BY RAIL

		A	B	C
1.	a. Number bales Texas cotton delivered to compresses and warehouses back of waterfront on intrastate rate		1,381,657	
	b. Number bales Texas cotton delivered to warehouses and compresses on waterfront at intrastate rate		520,232	
	c. Total number bales Texas cotton delivered on intrastate rate			1,901,889
	d. Percent of Texas cotton delivered on intrastate rate which was delivered to plants back of waterfront	72.64		
	e. Percent of Texas cotton delivered on intrastate rate which was delivered to plants on waterfront	27.36		
2.	a. Number bales Texas cotton on through export bills of lading		417,551	
	b. Number bales Texas cotton on through coastwise bills of lading		333,403	
	c. Number bales Texas cotton on bills of lading to the port on which export rate was paid		309,007	
			1,059,961	
3.	a. Grand total Texas cotton moving to Galveston by rail			2,961,850
	b. Grand total cotton from all states moving to Galveston by rail on depot delivery or 80# scale basis			2,540,875
	c. Percent of 3.b which originated in Texas	74.85		
4.	a. Number bales Texas cotton accorded first concentration at an interior point and delivered on 80# scale basis		505,211	
	b. Proportion delivered to plants back of waterfront (72.64 percent of 505,211)		366,985	
	c. Proportion delivered to plants on waterfront (27.36 percent of 505,211)		138,226	
5.	a. Number bales cotton from all states re-shipped from Galveston to interstate destinations by rail-See Note		184,598	
	b. Texas cotton included in 5.a (74.85 percent of 184,598)		138,172	
6.	a. Re-shipments from Galveston-Texas Cotton		138,172	
	b. Proportion of Texas cotton re-shipped from Galveston moving from plants back of waterfront (72.64 percent of 138,172)		100,368	
	c. Proportion of Texas cotton re-shipped from Galveston moving from waterfront (27.36 percent of 138,172)		37,804	

		D	E	F	G
		HANDLED BACK OF WATERFRONT		HANDLED AT WATERFRONT	
7.	Rail receipts-Texas cotton moving on intrastate rate-1.a & 1.b		1,381,657		520,232
8.	Deduct Texas cotton concentrated at interior-4.b & 4.c	366,985		138,226	
9.	Deduct Texas cotton re-shipped from Galveston by rail to interstate points-6.b & 6.c	100,368		37,804	
	Total.		467,353		176,030
10.	Number bales Texas cotton finally exported or re-shipped to coastwise destinations by owners independent of carriers		914,304		344,202

NOTE: Figures making reference to note are taken from the annual report of the Galveston Cotton Exchange.

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I. C. C. DOCKET 14940 ET AL.

EXHIBIT NO._____

WITNESS_____

TEXAS COTTON
STATEMENT SHOWING THE EFFECT UPON CARRIERS' REVENUE OF THE 'ONE RATE' PLAN.
USING RATE OF 83¢ per 100 POUNDS
AND
AN ALLOWANCE OF 20¢ PER BALE FOR DELIVERY TO SHIPSIDE FROM NON-ADJACENT AND BACK OF WATERFRONT FACILITIES AND ALLOWANCES OF 20¢, 15¢, 10¢ and 5¢ PER BALE FOR DELIVERY TO SHIPSIDE FROM ADJACENT PLANTS.
(BASED ON WEIGHT OF 500 POUNDS PER BALE)

	EXPLANATION	AT HOUSTON						AT GALVESTON						TOTAL LOSS OR GAIN IN REVENUE	
		BACK OF WATERFRONT			AT WATERFRONT			BACK OF WATERFRONT			AT WATERFRONT			$	¢per bale¢
		Bales	¢	$	Bales	¢	$	Bales	¢	$	Bales	¢	$		
		A	B	C	D	E	F	G	H	I	J	K	L	M	N
1.	Increase in revenue on cotton re-shipped export and coastwise.	674,165	x20¢	134,833.00	542,421	x20¢	108,484.20	914,304	x20¢	182,860.80	344,202	x20¢	68,840.40		
2.	Cost to carrier of getting this cotton to shipside wharf.	674,165	20¢	134,833.00	542,421	20¢	108,484.20	914,304	20¢	182,860.80	344,202	20¢	68,840.40		
3.	Reduction in revenue.			0.00			0.00			0.00			0.00		
4.	Increase in revenue on cotton concentrated at interior points.	151,934	15¢	22,790.10	122,241	15¢	18,336.15	366,985	15¢	55,047.75	138,226	15¢	20,733.90		
5.	Total			a22,790.10			a18,336.15			a55,047.75			a20,733.90		
6.	Total Increase at and back of waterfront.						a41,126.25						a75,781.65		
7.	Reduction in revenue on cotton handled on through export and coastwise bills of lading.				58,925	2½¢	d 1,473.12				1,059.961	2½¢	d26,499.03		
8.	Net increase or decrease all cotton						a39,653.13						a49,282.62	a 88,935.75	2.3
9.	If allowance for getting cotton from waterfront plants to adjacent shipside wharf is reduced to 15¢ per bale loss in revenue will be reduced or gain increased by				¢415,731	5¢	a20,786.55				¢ 86,050	5¢	a 4,302.50	a	
	Making total loss or gain of:-						a60,439.68						a53,585.12	114,024.80	2.6
10.	If this allowance is made 10¢ per bale, correction is:				¢415,731	10¢	a41,573.10				¢ 86,050	10¢	a 8,605.00	a	
	Making total loss or gain:-						a81,226.23						a57,887.62	139,113.85	3.1
11.	If this allowance is made 5¢ per bale, correction is:-				¢415,731	15¢	a62,359.65				¢ 86,050	15¢	a12,907.50	a	
	Making total loss or gain:-						a102,012.78						a62,190.12	164,202.90	3.7

a- Increase or positive amount. d- Decrease on negative amount.
x- Due to the present 1¢ per cwt unloading allowance an advance of 3¢ per cwt is treated as 4¢:
¢- The evidence in I.C.C. Docket 14940 shows that 75% of the cotton delivered to waterfront plants at Galveston is drayed to other piers for loading to vessels (100-I.C.C.-160-161); the remainder (25%) amounts to 86,050 bales.
¢ Based on total receipts Texas cotton at Houston and Galveston 4,373,364 bales.
¢ Of the 542,421 bales shown in Item 2 above, 126,690 bales were moved in cars or by barge to vessel at other docks; the remainder 415.731 bales, was loaded on vessels at adjacent wharves.

I. C. C. DOCKET 14940 ET AL.

EXHIBIT NO._____
WITNESS_____
Page 6

TEXAS COTTON
STATEMENT SHOWING THE EFFECT UPON CARRIERS' REVENUE OF THE 'ONE RATE' PLAN

USING RATE OF 82½¢ PER 100 POUNDS
AND
ALLOWANCES OF 20¢ PER BALE FOR DELIVERY TO SHIPSIDE FROM NON-ADJACENT AND BACK OF WATERFRONT FACILITIES AND ALLOWANCES OF 20¢, 15¢, 10¢, and 5¢ PER BALE FOR DELIVERY TO SHIPSIDE FROM ADJACENT PLANTS.
(BASED ON WEIGHT OF 500 POUNDS PER BALE)

EXPLANATION	AT HOUSTON						AT GALVESTON						TOTAL LOSS OR GAIN IN REVENUE	
	BACK OF WATERFRONT			AT WATERFRONT			BACK OF WATERFRONT			AT WATERFRONT				
	BALES	¢	$	BALES	¢	$	BALES	¢	$	BALES	¢	$	$	¢ per bale ≠
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1. Increase on cotton re-shipped export and coastwise.	674,165	x17½¢	117,978.88	542,421	x17½¢	94,923.68	914,304	x17½¢	160,003.20	344,202	x17½¢	60,235.35		
2. Cost to carrier of getting this cotton to shipside wharf.	674,165	20¢	134,833.00	542,421	20¢	108,484.20	914,304	20¢	182,860.80	344,202	20¢	68,840.40		
3. Reduction in revenue.			d16,854.12			d13,560.62			d22,857.60			d 8,605.05		
4. Increase on cotton concentrated at the interior	151,934	12½¢	a18,991.75	122,241	12½¢	a15,280.12	366,985	12½¢	a45,873.12	138,226	12½¢	a17,278.25		
5. Total			a 2,137.63			a 1,719.60			a23,015.52			a 8,673.20		
6. Total increase at and back of waterfront						a 3,857.23						a31,688.72		
7. Reduction in revenue on cotton handled on through export and coastwise bills of lading.				58,925	5¢	d 2,946.25				1,059,961	5¢	d52,998.05		
8. Net increase or decrease all cotton						a 910.98						d21,309.33	d20,398.35	0.42
9. If allowance for getting cotton from waterfront plants to adjacent shipside wharf is reduced to 15¢ per bale loss in revenue will be reduced or gain increased by;				¥415,731	5¢	a20,786.55				≠ 86,050	5¢	a 4,302.50		
Making total loss or gain of;						a21,697.53						d17,006.83	a 4,690.70	0.1
10. If this allowance is made 10¢ per bale, correction becomes:-				¥415,731	10¢	a41,573.10				≠ 86,050	10¢	a 8,605.00		
Making total loss or gain of;						a42,484.08						d12,704.33	a29,779.75	0.67
11. If this allowance is made 5¢ per bale, correction becomes:-				¥415,731	15¢	a62,359.65				≠ 86,050	15¢	a12,907.50		
Making total loss or gain of;						a63,270.63						d 8,401.83	a54,868.80	1.2

a- Increase or positive amount
d- Decrease or negative amount.

x Due to the present 1¢ per cwt unloading allowance an advance of 2½¢ per cwt is treated at 3½¢
≠ The evidence in I.C.C.Docket 14940 shows that 75% of the cotton delivered to waterfront plants at Galveston is drayed to other piers for loading to vessels(100-I.C.C. -160-161.); the remainder (25%) amounts to 86,050 bales.
¥ Based on total receipts Texas cotton at Houston and Galveston - 4,373,364 bales.
¢ Of the 542,421 bales shown in Item 2 above,126,690 bales were moved in cars or by barge to vessels at other docks;the remainder 415,731 bales, was loaded at adjacent wharves.

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I. C. C. DOCKET 14940 ET AL.

EXHIBIT NO._____

WITNESS_____

Page 7.

TEXAS COTTON

STATEMENT SHOWING THE EFFECT UPON CARRIERS' REVENUE OF THE 'ONE RATE' PLAN

USING RATE OF 82¢ PER 100 POUNDS

AND

ALLOWANCES OF 20c PER BALE FOR DELIVERY TO SHIPSIDE FROM NON-ADJACENT AND BACK OF WATERFRONT FACILITIES AND ALLOWANCES OF 20¢, 15¢, 10¢, and 5¢ PER BALE FOR DELIVERY TO SHIPSIDE FROM ADJACENT PLANTS.

(BASED ON WEIGHT OF 500 POUNDS PER BALE)

EXPLANATION	AT HOUSTON						AT GALVESTON						TOTAL LOSS OR GAIN IN REVENUE	
	BACK OF WATERFRONT			AT WATERFRONT			BACK OF WATERFRONT			AT WATERFRONT				
	Bales	¢	$	Bales	¢	$	Bales	¢	$	Bales	¢	$	$	¢ per bale
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1. Increase in revenue on cotton re-shipped export and coastwise	674,165	x15¢	101,124.75	542,421	x15¢	81,363.15	914,304	x15¢	137,145.60	344,202	x15¢	51,630.30		
2. Cost to carrier of getting this cotton to shipside wharf	674,165	20¢	134,833.00	542,421	20¢	108,484.20	914,304	20¢	182,860.80	344,202	20¢	68,840.40		
3. Reduction in revenue			d33,708.25			d27,121.05			d45,715.20			d17,210.10		
4. Increase in revenue on cotton concentrated at interior	151,934	10¢	a15,193.40	122,241	10¢	a12,224.10	366,985	10	a36,698.50	138,226	10	a13,822.60		
5. Total increase or decrease			d18,514.85			d14,896.95			d 9,016.70			d 3,387.50		
6. Total decrease at and back of waterfront			.....			d33,411.80						d12,404.20		
7. Reduction in revenue on cotton handled on through export and coastwise bills of lading				58,925	7½¢	d 4,419.37				1,059,961	7½¢	d79,497.07		
8. Net increase or decrease all cotton						d37,831.17						d91,901.27	d129,732.44	2.9
9. If allowance for getting cotton from waterfront plants to adjacent shipside wharves is reduced to 15¢ per bale, loss in revenue will be reduced or gain increased by:-				¢415,731	5¢	a20,786.55				¢86,050	5¢	a 4,302.50		
Making total loss or gain of:-						d17,044.62						d87,598.77	d104,643.39	2.4
10. If this allowance is made 10¢ per bale, correction is:-				¢415,731	10¢	a41,573.10				¢86,050	10¢	a 8,605.00		
Making total loss or gain of:-						a 3,741.93						d83,296.27	d 79,554.34	1.8
11. If this allowance is made 5¢ per bale, correction is:-				¢415,731	15¢	a62,359.65				¢86,050	15¢	a12,907.50		
Making total loss or gain of:-						a24,528.48						d78,993.77	d 54,465.29	1.2

a--Increase or positive amount. d--Decrease or negative amount.

x--Due to the present 1¢ per cwt unloading allowance, an advance of 2¢ per cwt is treated as 3¢.

¢ The evidence in I.C.C. Docket 14940 shows that 75% of the cotton delivered to waterfront plants at Galveston is drayed to other piers for loading to vessels (100-I.C.C.-160-161); the remainder (25%) amounts to 86,050 bales.

* Based on total receipts Texas cotton at Houston and Galveston-4,373,364 bales.

¢ Of the 542,421 bales in Item 2 above, 126,690 bales were moved in cars or by barge to vessels at other docks; the remainder, 415,731 bales, was loaded on vessels at adjacent wharves.

TEXAS COTTON

RECAPITULATION

EFFECT UPON REVENUE IN CENTS PER BALE AND TOTAL REVENUE -- TEXAS COTTON
BASED ON TOTAL RECEIPTS TEXAS COTTON AT HOUSTON & GALVESTON -- 4,373,364 BALES.

Rate	Allowance of 20¢ per bale for delivering to shipside from back of Waterfront and from non-adjacent waterfront plants; and allowances shown below for delivery to shipside from adjacent waterfront plants:							
	20¢		15¢		10¢		5¢	
	$	per bale	$	per bale	$	per bale	$	per bale
83¢	a 88,935.75	a 2.3¢	a 114,024.80	a 2.6¢	a 139.113.85	a 3.1¢	a 164,202.90	a 3.7¢
82½¢	d 20,398.35	d 0.47¢	a 4,690.70	a 0.1¢	a 29,779.75	a 0.67¢	a 54,868.80	a 1.2¢
82	d 129,732.44	d 2.9¢	d 104,643.39	d 2.4¢	d 79,554.34	d 1.8¢	d 54,465.29	d 1.2¢

Each reduction of ½¢ per 100 pounds in rate below 83 cents creates reduction in revenue of: -- - - 109,334.10

Each increase of 5¢ per bale in allowance creates decrease in revenue of: - - - - - - - - - - - - 25,089.05

a-increase d-decrease

[fol. 93]

Exhibit No. A-190, S. G. Reed

I. C. C. Dockets 11965, 13991, and 14940

Application of Rates on Cotton to Gulf Ports

Statement Showing the Effect upon Carrier's Revenue of the "One-rate" Plan Applied to 909,787 (See Note) Bales of Cotton from Arkansas, Oklahoma, Louisiana, Based upon Result per Bale on Revenue on Cotton Moving from Texas Points to Galveston and Houston During the 1924-25 Season

If rate is related to Texas rate of	With allowance of 20¢ per bale for delivery to shipside from back of waterfront facilities and allowance as shown below for delivery to shipside from plants located on waterfront adjacent to wharf			
	20¢ per bale	15¢ per bale	10¢ per bale	5¢ per bale
83¢	a$20,925.10	a$23,604.46	a$28,203.39	a$33,662.12
82½¢	d4,275.99	a907.78	a6,095.57	a10,917.44
82¢	d26,383.82	d21,834.88	d16,376.16	d10,917.44

a—Advance in revenue. d—Loss in Revenue.

NOTE.—Figures on pages 2 of Exhibit No. A-189 indicate that 1,065,071 bales of Arkansas-Oklahoma-Louisiana Cotton were received at Houston and Galveston. The Galveston receipts include 71,480 bales from these States that were reshipped from Houston, and this figure deducted from 1,065,071 leaves 993,591 bales net receipts at both ports from these States. Of the 993,591 bales, 83,804 were reshipped under transit to the Southeast, Pacific Coast, New Orleans and other interstate destinations, leaving 909,787 bales that were put aboard vessels.

[fol. 94] **Exhibit No. A-191, Witness S. G. Reed**

I. C. C. Dockets 11965, 13991, and 14940

Application of Rates on Cotton to Gulf Ports

Statement Showing the Effect upon Carriar's Revenue of the "One-rate" Plan When Applied to Cotton Originating in Texas, Arkansas, Oklahoma, Louisiana, and Moved to Galveston and Houston During the 1924-25 Season

Total, 5,283,151 Bales

If rate is related to Texas rate of	With allowance of 20¢ per bale for delivery to shipside from back of waterfront facilities and non-adjacent waterfront plants and allowances as shown below for delivery to shipside from adjacent waterfront plants			
	20¢ per bale	15¢ per bale	10¢ per bale	5¢ per bale
83¢	a$121,512.47 #2.3¢	a$137,361.93 #2.6¢	a$163,777.68 #3.1¢	a$195,476.59 #3.7¢
82½¢	d24,830 87 #47/100¢	a5,283.15 #1/10¢	a35,397.11 #67/100¢	a63,397.81 #1.2¢
82¢	d153,211.38 #2.9¢	d126,795.62 #2.4¢	d95,096.72 #1.8¢	d63,397.81 #1.2¢

a—Advance in revenue. d—Decrease in Revenue.

[fol. 95]

Exhibit No. A-192, W. B. Drake

Port Terminal Railroad Association

Statement Showing, by Months, Total Loaded Cars Handled, Total Cost of Operation and Average Cost of Handling Cars, by the Association for the Twelve Months' Period July 1st, 1924, to June 30th, 1925, and for the Ten Months' Period July 1st, 1925 to April 30th, 1926, and the Average Cost per Car Handled for Each Period

Period July 1st, 1924, to June 30, 1925			
Month	Total loaded cars handled	Total cost of operation	Average cost per loaded car
July, 1924	6,421	$30,374.93	$4.73
Aug., "	6,814	30,351.91	4.45
Sept., "	7,895	35,608.03	4.51
Oct., "	8,676	46,260.00	5.33
Nov., "	6,864	38,549.92	5.62
Dec., "	5,897	33,776.11	5.73
Jany., 1925	7,689	38,546.64	5.11
Feby., "	8,244	39,591.38	4.80
Mar., "	7,581	36,087.31	4.75
April, "	7,165	31,788.85	4.43
May, "	8,435	33,589.70	3.98
June, "	6,876	28,663.91	4.17
Total	88,557	$423,188.69	$4.79

Period July 1, 1925, to April 30, 1926			
Month	Total loaded cars handled	Total cost of operation	Average cost per loaded car
July, 1925	6,268	$31,942.11	$5.09
Aug., "	6,981	31,706.95	4.54
Sept., "	7,616	34,670.11	4.56
Oct., "	8,212	37,577.76	4.57
Nov., "	7,617	35,666.38	4.68
Dec., "	7,978	45,255.91	5.67
Jany., 1926	8,398	42,769.21	5.09
Feby., "	5,892	33,487.79	5.68
Mar., "	6,464	32,642.42	5.05
April, "	6,278	32,840.84	5.23
Total	71,704	$358,559.48	$5.00

[fol. 96] **Exhibit No. A-193, W. B. Drake**

Port Terminal Railroad Association

Statement of Detention of per Diem Cars

Dec., 1924	5.44 days
Jan., 1925	4.8 "
Feby., "	4.0 "
Mar., "	4.2 "
Apr., "	4.4 "
May, "	4.7 "
June, "	5.4 "
July, "	4.25 "
Aug., "	4.19 "
Sept., "	4.18 "
Oct., "	4.55 "
Nov., "	4.7 "
Dec., "	4.9 "
Jan., 1926	3.84 "
Feby., "	3.53 "
Mar., "	3.55 "
Apr., "	4.10 "
Average	4.45 days

[fol. 97] **Exhibit No. A-194, C. C. P. Rausch**

I. C. C. Docket 14940

St. Louis, Mo., March, 1926

Cotton Traffic (Missouri Pacific R. R.)

Calendar year	Tons	Per cent	Revenue	Per cent
1921	370,721	1.37	$2,824,402	3.43
1922	282,359	1.08	1,908,307	2.56
1923	216,107	0.66	1,547,072	1.80
1924	324,001	0.88	2,171,146	2.26
1925	404,830	1.00	2,481,637	2.38

Authority: Statistics Accounting Department.

Production of Cotton, Running Bales Counting Round as Half Bales

	Arkansas	United States
1921	788,047	7,977,778
1922	1,010,520	9,729,306
1923	643,643	10,170,694
1924	1,086,814	13,639,399
*1925	1,473,783	15,488,230

Department of Commerce Bulletin No. 158, "Cotton production and distribution," Washington, D. C., 1925.

*Preliminary Report, Department of Commerce, Bureau of the Census, Washington, January 23rd, 1926.

Exhibit No. A-196, Witness Rausch

I. C. C. Docket No. 14,940

St. Louis, March —, 1926

Rates, etc., on Cotton from Points on Mo. Pac. R. R. in Arkansas to Galveston, Tex., etc., and New Orleans, La.

Rates in Cents per 100 Pounds

To	Galveston, Tex.				New Orleans, La.			
			Rate				Rate	
From	Route	Miles	Domestic	Export	Route	Miles	Domestic	Export
Arkadelphia, Ark.	2	440	89	94	3	410	87	92
Austin, Ark.	2	531	90	95	4	464	87	92
Bald Knob, Ark.	2	562	91	96	8	465	87	92
Barton, Ark.	1	494	91	96	25	386	87	92
Batesville, Ark.	2	618	96	101	18	540	92	97
Benton, Ark.	2	482	90	95	11	432	87	92
Bridge Jct., Ark.	1	558	81.5	86.5	29	397	76.5	81.5
Brinkley, Ark.	17	530	91	96	30	422	87	92
Camden, Ark.	17	395	87	92	3	360	87	92
Chatfield, Ark.	1	538	81.5	86.5	29	417	76.5	81.5
Clarendon, Ark.	17	515	91	96	25	421	87	92
Conway, Ark.	2	536	96.5	101.5	4	469	93.5	98.5
Crossett, Ark.	1	422	91	96	32	317	87	92
Earle, Ark.	1	563	92	97	29	419	87	92
Elaine, Ark.	1	476	80.5	85.5	4	400	76.5	81.5
El Dorado, Ark.	33	389	89	94	11	328	87	92
Eudora, Ark.	1	418	81.5	86.5	31	300	76.5	81.5
Fair Oaks, Ark.	1	556	92	97	28	443	87	92
Farrell, Ark.	23	496	90	95	4	421	87	92
Felsenthal, Ark.	1	367	90	95	26	316	87	92
Forrest City, Ark.	1	528	92	97	25	417	87	92

Ft. Smith, Ark.	22	545	96.5	101.5	21	567	96.5	101.5
Gould, Ark.	1	443	91	96	31	367	87	92
Gurdon, Ark.	2	424	87	92	3	394	87	92
Halley, Ark.	1	413	80.5	85.5	31	330	76.5	81.5
Harrisburg, Ark.	1	567	92	97	25	456	87	92
Hartman, Ark.	19	605	96.5	101.5	4	545	93.5	98.5
Helena, Ark.	1	506	81.5	86.5	34	374	76.5	81.5
Hope, Ark.	2	392	87	92	15	380	87	92
Hot Springs, Ark.	12	485	95.5	100.5	13	440	93.5	98.5
Hoxie, Ark.	2	624	92	97	6	480	87	92
Jelks, Ark.	27	567	91	96	7	445	87	92
Kensett, Ark.	2	555	91	96	9	457	87	92
Kimball, Ark.	1	370	80	85	26	309	76.5	81.5
Knobel, Ark.	2	651	92	97	5	495	87	92
Lake Village, Ark.	1	403	80.5	85.5	31	315	76.5	81.5
Little Rock, Ark.	2	506	90	95	4	439	87	92
McGenee, Ark.	1	415	80.5	85.5	4	339	76.5	81.5
Malvern, Ark.	12	461	89	94	13	418	87	92
Marianna, Ark.	1	510	81.5	86.5	25	399	76.5	81.5
Monticello, Ark.	1	430	90	95	4	359	87	92
Montrose, Ark.	1	391	80	85	4	327	76.5	81.5
Nashville, Ark.	24	407	87	92	14	405	87	92
Nettleton, Ark.	1	585	92	97	6	454	87	92
Newport, Ark.	2	589	91	96	7	471	87	92
Okolona, Ark.	2	438	89	94	3	410	87	92
Paragould, Ark.	17	626	92	97	5	473	87	92
Pine Bluff, Ark.	17	462	90	95	4	397	87	92
Pine City, Ark.	1	513	91	96	25	405	87	92
Prescott, Ark.	2	407	87	92	14	395	87	92
Russellville, Ark.	2	581	96.5	101.5	4	514	93.5	98.5
Sheridan, Ark.	23	496	96.5	101.5	4	421	93.5	98.5
Van Buren, Ark.	20	557	96.5	101.5	21	573	96.5	101.5
Warren, Ark.	1	446	90	95	4	375	87	92
Watson, Ark.	1	436	80.5	85.5	4	360	76.5	81.5
Wynne, Ark.	1	543	92	97	25	432	87	92

Exhibit No. A-196—Continued

1. Mo. Pac.—Kinder—Gulf Coast Lines—Beaumont—G. C. & S. F.
2. Mo. Pac.—Texarkana—T. & P.—Shreveport—H. E. & W. T.
3. " " —El Dorado—C. R. I. & P.—Alexandria—L. R. & N.
4. " " —Tallulah—V. S. & I.—A. & W.—Jackson—I. C.
5. " " —Nettleton—Frisco—Memphis—I. C.
6. Frisco—Memphis—I. C.
7. C. R. I. & P.—Cotton Plant—M. & N. A.—Helena—Y. & M. V.—Jackson—I. C.
8. Mo. Pac.—Kensett—M. & N. A.—Helena—Y. & M. V.—Jackson—I. C.
9. M. & N. A.—Helena—Y. & M. V.—Jackson—I. C.
11. C. R. I. & P.—Alexandria—L. R. & N.
12. " —Camden—C. B.—Shreveport—H. & S.—H. E. & W. T.
13. " — " —Mo. Pac.—El Dorado—C. R. I. & P.—Alexandria—L. R. & N.
14. Mo. Pac.—Hope—L. & A.—Alexandria—L. R. & N.
15. L. & A.—Alexandria—L. R. & N.
17. St. L. S. W.—Shreveport—H. & S.—H. E. & W. T.—Houston—I. & G. N.
18. Mo. Pac.—Hoxie—Frisco—Memphis—I. C.
19. " " —Ft. Smith—K. C. S.—Beaumont—G. C. & S. F.
20. Frisco—Poteau—K. C. S.—Shreveport—H. & S.—H. E. & W. T.
21. " " " " —L. R. & N.
22. K. C. S.—Shreveport—H. & S.—H. E. & W. T.—Houston—I. & G. N.
23. Mo. Pac.—Pine Bluff—St. L. S. W.—Shreveport—H. & S.—H. E. & W. T.
24. G. N. & A.—Ashdown—K. C. S.— " " "
25. Mo. Pac.—Helena—Y. & M. V.—Jackson—I. C.
26. " —Ferriday—T. & P.
27. C. R. I. & P.—Brinkley—St. L. S. W.—Shreveport—So. Pac.
28. St. L. S. W.—Fargo—M. & N. A.—Helena—Y. & M. V.—Jackson—I. C.
29. Mo. Pac.—Memphis—I. C.
30. C. R. I. & P.—Wheatley—M. & N. A.—Helena—Y. & M. V.—Jackson—I. C.
31. Mo. Pac.—Tallulah—V. S. & P.—Jackson—I. C.
32. A. & L. M.—Bastrop—Mo. Pac.—Ferriday—T. & P.
33. C. R. I. & P.—Eunice—Beaumont—G. C. & S. F.
34. Y. & M. V.—Jackson—I. C.

Tariff Authority:

Mo. Pac. Tariff No. 215-L, I. C. C. No. A-6572.

[fol. 99] **Exhibit No. A-198**

I. C. C. Docket 14940 et al.

Application of Rates on Cotton to Gulf Ports

Statement showing movement of cotton through concentration points involving indirect or back-haul service as involved at points on the T. and P. Ry. in season beginning August 1, 1925; statement also shows average mile per bale on actual movement into compress compared with the average miles per bale into first compress point had shipments moved from origin to destination direct via junction shown

Data Taken from Claims Filed Prior to April 15, 1926

Transit point	Number of bales	Bale miles to transit point	Bale miles to first compress on direct route
Texarkana	438	10,459.0	19,530.5
Marshall	816	26,184.7	20,170.9
Mineola	60	1,208.0	1,540.0
Terrell	944	14,913.6	28,888.0
Fort Worth	1,649	19,608.5	55,115.6
Abilene	550	10,375.3	61,014.7
Dallas	2,107	64,037.5	73,297.6
Sweetwater	1,437	33,903.5	25,444.6
Colorado	655	11,490.8	6,783.7
Big Spring	1,800	18,720.0	48,780.0
El Paso	10,433	352,085.7	1,885,449.8
Clarksville	2,753	40,691.5	71,670.4
Paris	492	6,977.2	5,781.0
Honey Grove	923	10,728.3	10,688.0
Bonham	314	3,511.4	4,872.4
Sherman	822	20,795.9	51,119.7
Shreveport	3,291	117,316.0	185,494.6
Natchitoches	1,404	15,520.7	46,370.8
Alexandria	580	13,956.4	6,197.4
Bunkie	668	19,498.9	17,685.1
Opelousas	867	20,369.1	82,009.8
Total	33,003	832,352.0	2,707,924.6

Average Miles per Bale into Transit Point, 25.2 Miles.
" " " " " First
Compress Point on Direct Route, 81.3 Miles.
5/27/26.
HN.

[fol. 100]

Exhibit No. A-200

I. C. C. Docket No. 14940

Rates for Application on Cotton to Gulf Ports

Rates on Cotton, Carriers' Cost of Compression from Representative Points to New Orleans, La., Vicksburg, Miss., Memphis, Tenn., and St. Louis, Mo., on Domestic Traffic

Rates in Cents for 100 Pounds

To	New Orleans		Vicksburg		Memphis		St. Louis	
From	1917	1926	1917	1926	1917	1926	1917	1926
Alexandria, La.	45	74	..	..	53	83	63	95
Shreveport, "	49.5	80	..	..	50	80	60	91½
Dallas, Texas	64	96	73	107	73	107	73	107
Waco, "	64	96	73	107	73	107	73	107
Oklahoma City, Okla.	71½	105½	71½	105½	62	93½	70	103½
McAlester, Okla.	71½	105½	71½	105½	62	93½	70	103½

T&P Ry. Cotton No. 78-F, ICC 2294, 1917 Rates from La.
" " " " 78-K, " 3220, 1926 " " "
SW Lines Tariff No. 43-J, F. A. Leland's ICC No. 1185, from Texas, 1917.
SW Lines Tariff No. 43-0, F. A. Leland's ICC No. 1597, from Texas, 1926.
SW Lines Tariff No. 80-C, F. A. Leland's ICC No. 1187, from Oklahoma, 1917.
SW Lines Tariff No. 80-G, F. A. Leland's ICC No. 1776, from Oklahoma, 1926.

6/18/26.
IG.

[fol. 101]

Exhibit No. A-201, Witness Stakelum

I. C. C. Docket No. 14,940

Application of Rates on Cotton to Gulf Ports

Statement Showing Movement of Cotton in Bales to New Orleans, La., and Reshipments Account of West Side Carriers, also the Illinois Central and Y. & M. V. for the Year Aug. 1, 1924, to July 31, 1025

Character	Road	Originating in: Arkansas	Louisiana	Missouri	Oklahoma	Texas	Total Ark., La., Mo.	Total
Export under through bill of lading	GCL	108	232	....	001	714	....	1,055
	LR&N	33,851	944	....	2,519	38	....	37,352
	ML&T	13,414	1,204	88	475	115	....	15,296
	MoP	72,096	850	....	....	....	....	72,946
	T&P	4,873	3,888	572	1,304	6,646	....	17,283
	IC	13,674	....	1,946	1,163	....	....	16,783
Total		138,016	7,118	2,606	5,462	7,513	....	160,715
Export under B/L to port	GCL	....	....	....	....	....	....	....
	LR&N	....	....	....	....	....	....	....
	ML&T	4,584	14	311	396	1,166	....	6,471
	MoP	5,000	1,500	....	....	....	....	6,500
	T&P	1,080	1,550	....	725	1,086	....	4,441
	IC	17,453	11,820	1,344	951	....	....	31,568
Total		28,117	14,884	1,655	2,072	2,252	....	48,980
Total export		166,133	22,002	4,261	7,534	9,765	192,396	209,695

Exhibit No. A-201—Continued

Character	Road	Originating in: Arkansas	Louisiana	Missouri	Oklahoma	Texas	Total Ark., La., Mo.	Total
Coastwise on through B/L	GCL	....	....	....	....	....	....	....
	LR&N	....	1,353	....	....	....	....	1,353
	ML&T	....	799	....	....	....	....	799
	MoP	....	....	....	....	....	....	....
	T&P	....	11,607	....	....	4,598	....	16,205
	IC	....	....	....	....	....	....	....
Total		....	13,759	....	....	4,598	....	18,357
[fol. 102]								
Domestic	GCL	2,444	14,830	....	13,612	36,561	....	67,447
	LR&N	30,078	33,091	....	19,804	5,359	....	88,332
	ML&T	7,439	56,779	50	5,704	31,223	....	101,194
	MoP	76,747	47,492	....	....	....	....	124,239
	T&P	11,763	109,592	1,049	11,694	33,232	....	167,330
	IC	7,847	8,690	912	711	....	....	18,160
Total		136,317	270,474	2,011	51,525	106,375	....	566,073
Deducted		1,701	50,778	93	10,234	11,732	....	74,538
Net local		134,616	219,696	1,918	41,291	94,643	*356,230	492,164
Concentrated and reshipped all rail	GCL	41	4,152	....	250	1,285	....	5,728
	LR&N	668	3,208	....	2,979	319	....	7,174
	ML&T	58	5,368	....	330	1,420	....	7,176
	MoP	....	....	....	....	....	....	....
	T&P	934	35,913	93	6,675	2,880	....	46,495
	IC	....	....	....	....	....	....	....
Total		1,701	48,641	93	10,234	5,904	....	66,573

[fol. 103]

Coastwise	GCL	....	....	....	....	212	....	212
	LR&N	....	743	....	....	316	....	1,059
	ML&T	....	1,394	....	....	3,809	....	5,203
	MoP	....	....	....	....	....	....	....
	T&P	....	....	....	....	....	....	....
	IC	....	....	....	....	....	....	....
Total		....	2,137	....	....	4,337	....	6,474
Export	GCL	....	....	....	....	789	....	789
	LR&N	....	....	....	....	....	....	....
	ML&T	....	....	....	....	....	....	....
	MoP	....	....	....	....	....	....	....
	T&P	....	....	....	....	702	....	702
	IC	....	....	....	....	....	....	....
Total		....	....	....	....	1,491	....	1,491
Total concentrated		1,701	50,778	93	10,234	11,732	....	74,538

6/17/26.

*From Arkansas and Missouri 136,534 bales, which are interstate; from Louisiana 219,696 bales, which are intrastate, subject to the intrastate rates.

[fol. 104] **Exhibit No. 202, Witness Stakelum**

Docket 14940 et al

Statement of various switching charges applicable at New Orleans on cotton from cotton warehouses to shipside, worked out on per-bale basis for cars loaded with sixty-five bales, fifty bales, and forty bales, respectively; also average of the charges worked out on same basis. (See Note.)

Based on per-car charge of	When loaded 65 bales per car the per-bale charge is	When loaded 50 bales per car the per-bale charge is	When loaded 40 bales per car the per-bale charge is
$17.80	27.4¢	35.6¢	44.5¢
15.30	23.54¢	30.6¢	38.75¢
13.05	20.01¢	26.1¢	32.62¢
7.00	10.77¢	14.0¢	17.5¢
Based on average per-car charge of			
$13.29	20.44¢	26.58¢	32.22¢

Tariff Authority:
N. O. P. B. 1-J, I. C. C. 25.
I. C. R. R. 2-B, I. C. C. 6700.
T. M. T. Co. ——.

NOTE.—In addition to the switching charges unloading of 5 cents per bale, plus tollage of 3.75 cents per bale, total 8.75 cents per bale, must be added to determine total cost of making shipside delivery.

[fol. 105] **Exhibit No. A-204**

I. C. C. Dockets 11965, 13991, 14940

Statement Showing Average Detention of Cotton Arriving at New Orleans, La., via Gulf Coast Lines in Export Through Bills of Lading

	Years	
	1924, days	1925, days
October	5.1	0
November	3.2	8
December	7.3	6.2

This covers cotton which it was necessary to unload in our warehouse, awaiting arrival of steamer.

[fol. 106] Statement Showing Number of Bales Cotton Concentrated in Transit and Number of Bales Cotton Compressed in Transit (not Concentrated) at Opelousas, La., on Gulf Coast Lines, as shown Below, for the Seasons Ending July 31, 1923, 1924, and 1925

	Season			
	1923, bales	1924, bales	1925, bales	Name of compress
Compressed	—	—	158	Opelousas Compress Company
Concentrated	—	705	2851	

[fol. 107] I. C. C. Docket No. 14940

Louisiana Railway & Navigation Company

Statement of Cotton Compressed in Transit and Cotton Concentrated at Points on Louisiana Railway & Navigation Company During Three Years Ending July 31, 1923, 1924, 1925.

Cotton Compressed in Transit (not Concentrated), Bales

Point	Name of compress	August 1st to 7-31-23	8-1-23 to 7-31-24	8-1-24 to 7-31-25	Total
Shreveport, La.	American Compress & W. H. Co.	None	None	None	None
Alexandria, La.	Alexandria Compress & W. H. Co.	3,286	4,640	5,769	13,695

Cotton Concentrated (Bales)

Shreveport, La.	American Compress & W. H. Co.	4,945	10,843	9,318	25,106
Alexandria, La.	Alexandria Compress & W. H. Co.	3,381	4,825	2,223	10,429
		8,326	15,668	11,541	35,535

Compress charges at all points on this line are 18¢ per 100 pounds.

Compress charges are settled on actual weights furnished shipper, who in turn furnishes the LR&N Company such weights.

[fol. 108] I. C. C. Dockets 11965, 13991, and 14940

Louisiana Railway & Navigation Company, Louisiana Railway & Navigation Company of Texas

Number of bales of cotton moving to New Orleans from the States of Arkansas, Louisiana, Oklahoma, and Texas for the months of October, November, December of the years 1924 and 1925, and average detention on such cotton

		No. bales	Average detention
1. For year 1924.			
(a) Domestic, October, 1924:			
Arkansas	8,646		
Louisiana	10,748		
Oklahoma	2,237		
Texas	2,116		
	23,747	23,747	3½ days
(b) Export, October, 1924:			
Arkansas	3,036		
Louisiana	28		
Oklahoma	300		
Texas	none		
	3364	3364	10 days
(c) Coastwise, October, 1924:			
Arkansas	none		
Louisiana	109		
Oklahoma	none		
Texas	none		
	109	109	2½ days
(d) Domestic, November, 1924:			
Arkansas	5,222		
Louisiana	6,572		
Oklahoma	6,274		
Texas	1,542		
	19,610	19,610	3½ days

		No. bales	Average detention
(e) Export, November, 1924:			
Arkansas	8,593		
Louisiana	none		
Oklahoma	505		
Texas	none		
	9,098	9,098	10 days
(f) Coastwise, November, 1924:			
Arkansas	none		
Louisiana	424		
Oklahoma	none		
Texas	none		
	424	424	2½ days
[fol. 108½] (g) Domestic, December, 1924:			
Arkansas	6,870		
Louisiana	5,693		
Oklahoma	5,406		
Texas	736		
	18,705	18,705	3½ days
(h) Export, December, 1924:			
Arkansas	8,068		
Louisiana	101		
Oklahoma	914		
Texas	none		
	9,083	9,083	10 days
(i) Coastwise, December, 1924:			
Arkansas	none		
Louisiana	813		
Oklahoma	none		
Texas	none		
	813	813	2½ days

2. For year 1925:		No. bales	Average detention
(a) Domestic, October, 1925:			
Arkansas	4,716		
Louisiana	10,837		
Oklahoma	2,037		
Texas	1,035		
	18,625	18,625	3½ days
(b) Export, October, 1925:			
Arkansas	7,648		
Louisiana	259		
Oklahoma	83		
Texas	none		
	7,990	7,990	10 days
(c) Coastwise, October, 1925:			
Arkansas	none		
Louisiana	1,035		
Oklahoma	none		
Texas	none		
	1,035	1,035	2½ days
(d) Domestic, November, 1925:			
Arkansas	4,158		
Louisiana	6,020		
Oklahoma	3,660		
Texas	580		
	14,418	14,418	3½ days
(e) Export, November, 1925:			
Arkansas	7,081		
Louisiana	none		
Oklahoma	867		
Texas	none		
	7,948	7,948	10 days

		No. bales	Average detention
[fol. 109] (f) Coastwise, November, 1925:			
Arkansas	none		
Louisiana	20		
Oklahoma	none		
Texas	none		
	20	20	2½ days
(g) Domestic, December, 1925:			
Arkansas	3,175		
Louisiana	5,304		
Oklahoma	3,884		
Texas	400		
	12,763	12,763	3½ days
(h) Export, December, 1925:			
Arkansas	6,100		
Louisiana	none		
Oklahoma	777		
Texas	none		
	6,877	6,877	10 days
(i) Coastwise, December, 1925:			
Arkansas	none		
Louisiana	1,401		
Oklahoma	none		
Texas	none		
	1,401	1,401	2½ days

[fol. 110] I. C. C. Docket 14940 et al.

Southern Pacific Lines in Louisiana

Statement of Cotton Compressed in Transit and Concentrated in Transit at Louisiana Compresses on the Southern Pacific Lines in Louisiana

	Opelousas	Alexandria
Number of bales compressed in transit (not concentrated) handled for the season:		
1923-4	....	....
1924-5	1548	1157
Number of bales concentrated in transit:		
1923-4	13354	....
1924-5	21727	....
Rate for the service of compressing paid by carriers to compress company	18¢ Cwt.	18¢ Cwt.
Method used by carriers in arriving at weights used in making settlement with compresses	Based on Gin Weights	

Names of Compresses

Alexandria, Louisiana—Alexandria Compress Company.
Opelousas, Louisiana—Opelousas Compress Company.
6/2/26.

[fol. 111] I. C. C. Docket 14940 et al.

Southern Pacific Lines in La.

Statement of Cotton to New Orleans on Through Export Bills of Lading for the Months of October, November, and December, 1924 and 1925, with Detention to Same

3-month period	No. of bales	Cars	Detention in cars	Cars	Detention in shed
1924	8,655	48	203 days	84	967 days

48 Cars' detention 203 days average 4¼ days per car.
84 Cars unloaded, detention 967 days, average 11½ days per car.

1925	10,711	97	338 days	71	466 days

97 Cars' detention 338 days average 3½ days per car.
71 Cars unloaded, detention 466 days, average 6½ days per car.

[fol. 112] I. C. C. Docket 14940 et al.

Application of Rates on Cotton to Gulf Ports

Statement of Detention to Cars Containing Export Cotton at New Orleans, La., on the T. and P. Railway During the Months of October, November, and December, 1924 and 1925

	1924	1925
Total Number of Cars	288	141
Total Number of Bales	15,861	6,957
Average Bales Per Car	55.1	49.3
Total Car Detention (Days)	1,609	401
Average Days Detention Per Car.....	5.6	2.8
Additional Detention in Warehouse:		
Total Days	70,097	24,090
Average Per Bale	4.4	3.5

HZ 6/14/26

[fol. 113]

Exhibit No. A-206

I. C. C. 14940

Cost per 1,000 Gross Ton-miles Based on Total Expenses Assigned to Freight on Representative Railroads in Texas and Louisiana for the Calendar Years 1924 and 1925

	1924			1925		
	Gross ton-miles	Expense	Cost per 1,000 gross ton-miles	Gross ton-miles	Expense	Cost per 1,000 gross ton-miles
T. & P.	4,827,204	$18,042,262.39	3.74	5,372,371	$19,189,743.29	3.57
M. K. & T. of Tex.	3,439,649	11,264,434.26	3.27	3,608,998	11,609,831.61	3.22
I. & G. N.	2,199,682	9,415,077.42	4.28	2,495,999	9,862,800.86	3.95
St. L. & S.W. of Tex.	1,041,459	5,928,480.47	5.69	1,067,458	5,698,596.05	5.34
T. & B. V.	405,935	1,962,916.43	4.84	425,781	2,170,155.65	5.10
G. C. & S. F.	5,662,024	17,100,772.00	3.02	5,963,190	17,033,327.37	2.86
Gulf Coast Lines (Inc. the S. A. U. & G.)	2,472,020	7,208,894.27	2.92	2,750,574	7,722,817.25	2.81
Southern Pacific (La. & Tex. Lines)	10,939,341	40,017,170.43	3.66	10,832,620	40,555,251.88	3.74
Totals	30,987,314	110,940,007.67	3.58	32,516,991	113,842,523.96	3.50
Weighted Average Cost			3.58			

Exhibit No. AX

Statement of Car Detention and Demurrage Assessed at Galveston on Export Traffic

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
					August, 1920						
364	.....	822	243	.....	601	643	$140.00	2,590	1,250	$140.00	4,013
					Average Detention per Car						
	2.26 days			2.47 days			4.03 days			3.21 days	
					September, 1920						
586	.....	1,556	722	.....	2,300	665	$80.00	3,193	1,973	$80.00	7,049
					Average Detention per Car						
	2.66 days			3.19 days			4.80 days			3.57 days	
					October, 1920						
1,723	.....	6,049	1,325	$26.00	5,121	804	$288.00	5,613	3,852	$314.00	16,783
					Average Detention per Car						
	3.51 days			3.86 days			6.98 days			4.36 days	
					November, 1920						
1,623	$5.00	6,886	1,681	$39.00	8,078	1,078	$2,025.00	11,777	4,382	$2,069.00	26,721

				Average Detention per Car							
	4.23 days			4.81 days			10.92 days			6.10 days	
				December, 1920							
1,133	.....	3,772	920	$3.00	2,960	689	$1,147.00	8,138	2,742	$1,150.00	14,870
				Average Detention per Car							
	3.33 days			3.22 days			11.81 days			6.02 days	
				Totals and Averages for Period August, 1920, to December, 1920, Inclusive							
5,429	$5.00	19,065	4,891	$68.00	19,060	3,879	$3,680.00	31,311	14,199	$3,753.00	69,436
	3.51 days			3.90 days			8.07 days			4.86 days	
[fol. 115]											
				August, 1921							
584	.....	1,552	606	.....	1,749	778	$24.00	3,095	1,968	$24.00	6,396
				Average Detention per Car							
	2.66 days			2.89 days			3.98 days			3.25 days	
				September, 1921							
981	.....	3,430	768	$22.00	2,470	1,236	$84.00	5,689	2,985	$106.00	11,589
				Average Detention per Car							
	3.50 days			3.22 days			4.60 days			3.88 days	
				October, 1921							
2,087	.....	8,872	1,017	$20.00	3,835	1,162	$234.00	6,140	4,266	$254.00	16,847

Exhibit No. AX—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
	Average Detention per Car										
	3.29 days			3.77 days			5.28 days			3.95 days	
					November, 1921						
1,448	.....	6,952	606	$27.00	2,636	908	$316.00	4,279	2,962	$343.00	13,867
	Average Detention per Car										
	4.80 days			4.35 days			4.71 days			4.68 days	
					December, 1921						
695	$81.00	2,901	670	$2.00	2,046	784	$579.00	4,283	2,149	$472.00	9,230
	Average Detention per Car										
	4.17 days			3.05 days			5.46 days			4.30 days	
					Totals and Averages for Period August, 1921, to December, 1921, Inclusive						
5,795	$81.00	21,707	3,667	$71.00	12,736	4,868	$1,037.00	23,486	14,330	$1,189.00	57,929
	3.75 days			3.47 days			4.82 days			4.04 days	
[fol. 116]											
					August, 1922						
56	.....	83	296	.....	572	1,238	$176.00	4,670	1,590	$176.00	5,325

				Average Detention per Car							
	1.48 days			1.96 days			3.77 days			3.35 days	
				September, 1922							
477	.....	1,104	755	.....	1,816	1,559	$1.00	4,870	2,791	$1.00	7,790
				Average Detention per Car							
	2.31 days			2.41 days			3.12 days			2.79 days	
				October, 1922							
1,113	.....	3,395	662	$6.00	2,264	1,697	$55.00	6,621	3,472	$61.00	12,280
				Average Detention per Car							
	3.05 days			3.42 days			3.94 days			3.54 days	
				November, 1922							
1,221	.....	5,210	509	$13.00	1,985	1,038	$142.00	4,459	2,768	$155.00	11,654
				Average Detention per Car							
	4.27 days			3.90 days			4.30 days			4.21 days	
				December, 1922							
511	.....	1,472	264	$12.00	791	1,039	$92.00	3,816	1,814	$104.00	6,079
				Average Detention per Car							
	2.88 days			2.99 days			3.67 days			3.35 days	
				Totals and Averages for Period August, 1922, to December, 1922, Inclusive							
3,378	.....	11,364	2,486	$31.00	7,428	6,571	$466.00	24,436	12,435	$497.00	43,128
	3.33 days			2.99 days			3.72 days			3.47 days	

Exhibit No. AX—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
[fol. 117]											
					August, 1923						
102	.....	124	411	.....	619	957	$30.00	2,838	1,470	$30.00	3,581
					Average Detention per Car						
	1.31 days			1.51 days			2.97 days			2.44 days	
					September, 1923						
564	.....	952	638	.....	1,241	1,158	$6.00	3,225	2,360	$6.00	5,418
					Average Detention per Car						
	1.69 days			1.95 days			2.78 days			2.30 days	
					October, 1923						
729	.....	1,344	879	.....	1,841	2,378	$58.00	6,902	3,986	$58.00	10,087
					Average Detention per Car						
	1.84 days			2.09 days			2.90 days			2.53 days	
					Totals and Averages for Period August, 1923, to October, 1923, Inclusive						
1,395	.....	2,420	1,928	.....	3,701	4,493	$94.00	12,965	7,816	$94.00	19,086
	1.73 days			1.92 days			2.89 days			2.44 days	

[fol. 118] Statement of Car Detention and Demurrage Assessed at Galveston on Cotton Taking Local Delivery

No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
	1920			1921		August	1922			1923	
395	$127.00	1,006	1,486	$1,079.00	4,340	1,112	$41.00	2,416	1,997	$216.00	3,144
	2.55 days			2.92 days			2.17 days			1.57 days	
						September					
1,726	$624.00	4,741	2,148	$390.00	6,004	3,968	$792.00	10,138	5,103	$1,658.00	12,088
	2.75 days			2.80 days			2.55 days			2.37 days	
						October					
3,031	$1,434.00	10,552	3,568	$1,063.00	12,116	5,734	$4,112.00	19,338	5,854	$6,217.00	18,080
	3.48 days			3.40 days			3.37 days			3.09	
						November					
3,205	$4,232.00	14,583	2,890	$4,824.00	12,227	5,097	$13,461.00	24,478	....	.....	....
	4.55 days			4.23 days			4.80 days		....	.....	....

Exhibit No. AX—Continued

Cotton moving under through bills of lading			Cotton moving under local bills of lading marked for export			All other export traffic			Total all export traffic		
No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention	No. of cars	Demurrage	Total detention
					December						
2,398	$2,191.00	9,160	2,079	$878.00	6,264	2,301	$846.00	6,719	....	.....	....
					Average Detention per Car						
	3.82 days			3.01 days			2.92 days		....	.....	....
					Totals and Averages for Periods Shown Above						
10,755	$8,608.00 4.89 days	40,042	12,171	$8,234.00 3.36 days	40,951	18,212	$19,252.00 3.46 days	63,089	12,954	$8,091.00 2.57 days	33,312

(6330)

See Volume 28 for record & Original Exhibits

FILE COPY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ~~612.~~ 19

ALEXANDER SPRUNT & SON, INC., ET AL., *Appellants*,

versus

THE UNITED STATES OF AMERICA, ET AL., *Appellees.*

THE JURISDICTION.

R. C. FULBRIGHT,
Counsel for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 612.

ALEXANDER SPRUNT & SON, INC., ET AL., *Appellants,*

versus

THE UNITED STATES OF AMERICA, ET AL., *Appellees.*

THE JURISDICTION.

A. Statutes.

Section 238 of the Judicial Code as amended by Act of February 13, 1925 (c. 229, 43 Stat. 938), paragraph (4).

Urgent Deficiences Act of October 22, 1913 (c. 32, 38 Stat. 219, 220).

B. Decree.

The final decree was entered December 5, 1927 (Record page 132).*

*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of this Court. The record has not yet been printed.

The application for appeal was filed and the order allowing the appeal was entered December 31, 1927 (Record pages 134 and 135). The case was docketed in the Supreme Court on December 31, 1928, under orders of the District Court extending the time therefor to that date (Record pages 159 to 167).

C. Rulings.

The suit (Record page 4) was brought to enjoin the enforcement of the order of the Commission (Record page 54a) entered April 4, 1928, in the proceedings entitled "Application of Rates on Cotton to Gulf Ports," Docket No. 14940, and "Weatherford, Crump & Company vs. Abilene & Southern Railway Company, et al.," Docket No. 13991, 123 I. C. C. Reports 685. The order directed respondent carriers to establish, maintain and apply, in the manner indicated in the report, export and interstate domestic rates, charges, regulations and practices which would remove the undue prejudice found to exist in the relationship between interstate rates on cotton for city deliveries and shipside deliveries in favor of warehouses of appellants at the ports of Galveston, Houston, Texas City, Beaumont, Port Arthur, and New Orleans, and shippers using such facilities and against warehouses and compresses located at interior points and back from the waterfront at the ports, and shippers using such facilities. The report, which was made a part of the order, found that the undue prejudice should be removed by increasing the city delivery rates 1 cent per 100 pounds and reducing the shipside rates (exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds) to the basis of the increased city delivery rates and that allowances on cotton which respondent carriers were

under obligation to transport to shipside under transit arrangements should be made except on cotton moved from the so-called waterfront warehouses of appellants upon and across adjacent wharves.

Circuit Judge Foster and District Judges Burns and Hutcheson who sat in the specially constituted District Court concurred in the full opinion (Alexander Sprunt & Son, Inc., *et al.*, v. United States, *et al.*, 23 Fed. (2) 874, Record page 121) and signed the final decree dismissing the bill (Record page 132).

D. Cases.

Baltimore & Ohio Railroad Company v. The United States, 277 U. S. 291, 48 Sup. Ct. Rep. 520.

United States v. Berwind-White Coal Min. Co., 274 U. S. 564.

United States v. New York Central Railroad Co., 272 U. S. 457.

Brimstone Railroad Company v. United States, 277 U. S. , 48 Sup. Ct. Rep. 282.

Western Paper Makers Chemical Company, *et al.*, v United States, 271 U. S. 268.

Respectfully submitted,

R. C. FULBRIGHT,
Counsel for Appellants.

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CHARLES EL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19.

ALEXANDER SPRUNT & SON, INC., ET AL., *Appellants.*

against

THE UNITED STATES OF AMERICA, ET AL., *Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

STIPULATION FOR PASSING CASE FOR ORAL ARGUMENT AND EXTENDING TIME FOR FILING BRIEFS, IN SUPPORT OF ORAL MOTION TO PASS.

JOHN W. DAVIS,
R. C. FULBRIGHT,
Counsel for the Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19.

ALEXANDER SPRUNT & SON, INC., ET AL., *Appellants.*

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

STIPULATION FOR PASSING CASE FOR ORAL ARGUMENT AND EXTENDING TIME FOR FILING BRIEFS, IN SUPPORT OF ORAL MOTION TO PASS.

The stipulation hereinafter set forth has been executed by counsel for all parties in support of oral

motion by counsel for appellants to pass the oral argument in this cause, from the week beginning October 21, 1929, to the week beginning October 28, 1929, and embodies their agreement to the extension of time for filing briefs accordingly.

The principal reason supporting the motion is set forth in the stipulation and request is hereby made that if the motion cannot be granted as made then the parties do not consent to a continuance of the case and the argument will have to proceed as set.

JOHN W. DAVIS,
R. C. FULBRIGHT,
Counsel for the Appellants.

Dated at Washington, D. C.,
October 7, 1929.

STIPULATION FOR PASSING CASE FOR ORAL ARGUMENT AND EXTENDING TIME FOR FILING BRIEFS.

It is stipulated by and between counsel for all of the parties in the above entitled cause that this case, now set for oral argument for the week beginning October 21, 1929, may be passed and called for oral argument during the week of October 28, 1929; and counsel stipulate and agree to consent to motion of counsel for appellants to pass the case for argument in accordance with this stipulation. It is also agreed that the time to file briefs on the merits under Rule 25 may be extended for a period of ten (10) days.

The reason for the foregoing stipulation is that R. C. Fulbright, counsel for appellants, will have to participate in an argument before the Interstate Commerce Commission in I. C. C. Docket 17000, Part 2, Western Trunk Line Class Rates, upon the dates when it now appears that the above case will be reached for for argument in the Supreme Court and due to the fact that there are more than fifty counsel representing numerous diverse interests in the proceeding before the Commission, it is impractical to reset the argument before that body to a date which will be consistent with engagements of counsel without very great delay. As the proceeding before the Commission involves the general rate structure in the entire Northwestern section of the United States, counsel for appellants herein will present motion to pass the argument in this cause to the following week.

JOHN W. DAVIS,
R. C. FULBRIGHT,
Counsel for the Appellants.

GEORGE C. BUTTE,
For United States of America.

J. STANLEY PAYNE,
For Interstate Commerce Commission.

A. L. REED,
For other Intervenors.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1929.

No. 19.

ALEXANDER SPRUNT & SON, INC., *et al.*,
Appellants,

against

THE UNITED STATES OF AMERICA, *et al.*,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

BRIEF FOR THE APPELLANTS.

JOHN W. DAVIS,
R. C. FULBRIGHT,
Counsel for the Appellants.

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The Argument:

I. There is no evidence to support the commission's finding of undue prejudice and undue preference.

The order for an equalization of rates for the two types of service is in direct conflict with the evidence that the record contains, with facts that are undisputed, and with the commission's own findings of specific facts.

The order exceeds the commission's statutory power and should have been enjoined 22

(a) There is no basis in law or in fact for an equalization or rates as between the appellants and their so-called "uptown" port competitors 24

(b) There is no evidence to support the commission's finding of undue preference and undue prejudice as between the appellants and the uptown merchants 33

(c) There is no basis in fact or in law for the commission's order for an equalization of rates as between the appellants and the interior merchants ... 34

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II. Even if the commission's finding of undue prejudice and undue preference were valid, and even if an equalization of rates were warranted, the commission would still be without jurisdiction to raise the rates paid by the appellants in the absence of a valid finding after full hearing that such rates were unjustly and unreasonably low and a valid finding after full hearing that the new rates by which they were to be replaced would be just and reasonable 52

III. The commission's prohibition of allowances to the appellants for substituted transportation from their warehouse to the adjacent wharves is arbitrary and in violation of law, and should be enjoined 62

IV. The whole aim of the commission was to equalize conditions among exporters of cotton.

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BRIEF FOR THE APPELLANTS.

The Opinion Below.

The opinion of the court below is reported in 23 Federal Reporter, Second Series, page 874. It also appears in the record herein submitted at page 131. The reports of the Interstate Commerce Commission that have been filed in the present controversy will be found in volumes 100 and 123 of the Interstate Commerce Commission Reports, at pages 159 and 685, respectively, and also in the record at pages 41 and 56.

Jurisdiction.

The basis of this court's jurisdiction is set forth in a separate statement heretofore filed in accordance with the rules of this court.

The Facts.

The Nature of the Case:

This is an appeal from a final judgment entered by the Houston Division of the United States District Court for the Southern District of Texas. The judgment was entered in a suit brought by the appellants to restrain the enforcement of an order of the Interstate Commerce Commission. The judgment revoked a temporary injunction that the court had previously granted, denied the permanent injunction that the appellants sought to obtain, and directed the dismissal of the suit for want of equity.

The order of the commission that was under attack was entered following a report by that body upon the legality of the pre-existing differential relationship between local and export cotton rates on traffic originating at various interior points in Arkansas, Oklahoma, Texas and Louisiana and moving thence to Galveston, Houston, New Orleans and other western gulf ports, and upon the legality, also, of certain practices of the carriers under those rates. The commission found the rates and certain of the practices under them unduly preferential of the appellants and unduly prejudicial to certain of the appellants' competitors, and the order in question was entered with the object of curing the supposedly unlawful situation. That portion of the order that is in issue here directed an equalization of the two classes of rates at a prescribed level and forbade certain allowances to the appellants for substituted transportation.

The Rates in Issue and the Services Thereunder:

The local and export rates that are concerned in the present controversy cover two quite different types of service. Both services have always been offered by the carriers to all shippers in any way herein concerned, and each service has always been offered by the carriers on exactly the same terms to all such shippers.

The local rates cover transportation from the interior originating points to the ports with the right of delivery at any point within the city-delivery limits at those points. The right to delivery at "shipside"—*i. e.*, to the particular ocean vessel that is destined to carry the individual shipment—is not, however, given under local rates. The rates apply to shipments of cotton in any quantity and therefore include the obligation of unloading; in general, however, this is discharged by an allowance to the shipper. The free time allowed for unloading is 48 hours, with demurrage collectible thereafter at the rate of $2 a day for the first four days and $5 a day for each day after that. In estimating demurrage, the shipper is permitted to average his own car detentions during each month; but even then, the free detention for a single car cannot exceed 4 days. On each local movement, one free stop is allowed to shippers for the performance upon the cotton of certain necessary merchandising processes, but the privilege must be claimed at an intermediate point; it cannot be claimed at the port, *i. e.*, at the destination.

The line haul under export rates is indistinguishable from that performed by the carriers under local rates, and like the local rates, the export rates also cover the service of unloading; in all other respects, however, the service they cover is more inclusive than that given under local rates. The service under the export rates constitutes the railroads' contribution to a through service to the ultimate overseas destinations to which export cotton moves. In consequence, a through bill of lading service to such points is given as a part of the rail service, and the right to delivery at shipside is also included. This means that the railroad undertakes to deliver each particular shipment at the point designated on the wharf by the ship's agent in charge of the berth of the vessel that is destined to carry that individual shipment. The ship's agent has the cotton placed so as to facilitate loading in the order proper in view of the ports at which the vessel will call, and the railroad must deliver at the point

designated in order to secure acceptance. The storage, average, and demurrage provisions of the export service are much more liberal than those applying under local rates. The absolute free period allowed for unloading is five times as long as the period given under local rates—*i. e.*, 10 days instead of 2. This can be increased to 18 days under the average rules applicable to export shipments. The averaging permitted is that of all shipments received in any one month at any one pier without regard to the identity of the shippers. The demurrage to be paid when the absolute and average free periods are exceeded is only $1 per day instead of the penalty rates applicable upon local shipments. The rate continues the same however long the excess detention may last. The privilege of a single free stop for merchandising is given as on local movements; but the privilege is not limited to intermediate points. It may be claimed even at city-delivery points at the rail destination. The practical meaning of this is that after delivery at a city-delivery point at the port, the carrier may be called upon to return and make a second delivery to shipside. In addition to the foregoing elements of difference, the export service is expedited to facilitate making the ocean connections.

Upon shipments consigned to shipside without billing beyond that point, export rates are also collected. Such shipments move under domestic bills marked "for export". The absolute free storage period on such shipments is 4 days. It is thus shorter than the absolute free period upon shipments under the through export bills, but twice that allowed upon local movements. The averaging rules upon these shipments are the same as those upon the through export shipments, with the result that the free period on these shipments can be increased to 12 days per car. The demurrage rate, also, is the same as upon through shipments—*i. e.*, $1 per day regardless of the length of the excess detention.

For some years prior to the commission's order in the present case, the export rates charged by the carriers exceeded the corresponding local rates by 5 cents per 100

pounds; but this difference included a 2-cent wharfage fee that the carriers are obliged to pay when making shipside deliveries.* The net differential between the two classes of rates to be ascribed to the difference in the carriers' own srvices thereunder was therefore 3 cents per 100 pounds.

There are some references in the commission's reports and in the opinion of the court below to a 3½-cent differential. That was the differential between the Texas intrastate local rates to the Texas ports and the interstate export rates applicable to these ports from common points in Texas. The validity of the Texas intrastate local rates was examined by the railroad commission of that state in an investigation held conjointly with that by the Interstate Commerce Commission that is involved herein (R., 45). The orders of the Interstate Commerce Commission deal only with export rates and interstate domestic rates (R., 53 and 81). The 3-cent differential is therefore the only differential with which this appeal is concerned.

The rate schedules that established the 3-cent differential were attacked in *Louisiana Cotton*, 46 I. C. C. 451, 452 (I. & S. Docket No. 955), shortly after their publication by the carriers, but they were approved by the commission as just and reasonable and non-discriminatory. The commission reaffirmed its approval in *Galveston Commercial Association* v. *Alabama & Vicksburg Railway Company*, 77 I. C. C. 388 (Docket No. 11965), and also held that the differential must be maintained alike to all of the gulf ports to avoid unjust discrimination as between port and port on export business.

In addition to the local and export rates just described there is another rate that is involved in this controversy. This is the rate for switching movements to shipside from the cotton warehouses that are located at city-delivery points within the port cities. This charge is made up of a switching charge, in most cases $8.10 per car, and a loading and unload-

*The fee varies slightly from port to port, but 2 cents per 100 pounds is the average.

ing charge of 4 cents per bale of cotton carried (R., 322). There is some variation in the switching charge dependent upon the number of lines involved, and there is obviously a variation in the net total rate on a per-100-pound basis dependent upon the loading of the cars switched; but for cars fully laden with high-density cotton, these charges amount in most cases to about 3 cents per 100 pounds (R., 43 and 322).

The Nature of the Cotton Traffic:

After harvesting, cotton is ginned and baled by the producer, but as a rule he does nothing further to prepare it for the ultimate consumer. Instead he sells it, as it is, to some cotton merchant, usually at the nearest country railway station. The lots of cotton so sold are seldom such as the customers of the purchasing merchants would accept. The customers of such merchants are chiefly cotton mills, and they demand their cotton in large lots of even-running grade and staple; the lots sold by producers, on the other hand, are nearly always small and of miscellaneous composition. Before these can be resold they must be sorted into the standard grades and staples that the market demands. It is seldom practicable to do this at the purchasing points, for the total cotton purchasable at a single station is usually small. Instead, it is usual to assemble the cotton at so-called "concentration points", which may be either in the interior or at the ports, and there conduct the sampling, sorting and tagging that constitute what is known as "merchandising" the cotton. When these processes are complete, the cotton is ready to be sold, either to the ultimate consumer or, possibly, to some other merchant for reconcentration into larger lots or remerchandising into lots that are more exactly sorted. In any case, it is necessary that the cotton be stopped at least once by the shipper in its movement from producer to consumer.

As already intimated, the cotton traffic originates as a myriad of small shipments from scattered way stations. As

offered for transportation at these points, the cotton is nearly always "flat", or uncompressed. In this state, its density is only about 11 pounds to the cubic foot, and its bulk so great that heavy loading of railroad cars is practically impossible. The carriers early recognized that the better car-loading possible after compression made it to their interest to promote the compressing of the cotton as early as possible in its movement from producer to consumer. This was especially so for the reason that the cotton traffic is pretty well concentrated in the months when grain movements also are heaviest and the carriers' equipment therefore in maximum demand. The railroads accordingly began the practice, when not otherwise directed by shippers, of compressing at the first opportunity in transit all cotton offered to them in uncompressed bales. Rates were made for the carriage of cotton thus compressed in transit which were lower than those applying for its through carriage in uncompressed bales. Rates upon cotton presented for transportation already compressed were made lower still. These three classes of cotton rates are still continued by the railroads. For very short movements, however, upon which, of course, compression is of little advantage to the carriers, there are no compressed-in-transit rates. These exist only for movements for which the "flat" rates are 56 cents or more (R., 70).

In the beginning the compresses used under the compressed-in-transit rates were owned or controlled by the railroads themselves, but to-day compression is generally performed by shippers and others in return for allowances made therefor by the carriers. The compression performed for the carriers is so-called "standard-density" compression in which the density of the bales is increased to about 22 pounds per foot. "High-density" compression (about 33 pounds) is also practiced in preparation for ocean carriage, but in this the railroads have no interest. The rail rates do not discriminate between standard- and high-density bales.

Upon the theory apparently, that cotton moving under compressed-in-transit rates was being stopped at the com-

press points any way, the carriers early began allowing shippers to concentrate and merchandise their cotton at such points without charge. Later they ceased to insist that the privilege be claimed at the compression point, and that is the rule today. Nearly all present tariffs allow free transit concentration at whatever point the shipper may elect. Other things equal, however, the shipper is apt to do his merchandising at the carrier's compression point. There is some duplication of labor when compression and concentration are performed separately, and since the carriers of course pay the same allowance for compression whether it be conducted simultaneously with concentration or not, the merchant gains some advantage when the two processes are made to coincide. In any event, the shipper is allowed but one stop without charge upon a single movement; for additional stops, whether for re-concentration, high-density compression, or some other purpose, he is required to pay 3½ cents per 100 pounds in each case.

The practice, when the privilege of transit concentration is claimed, is for the merchant to bill and pay for shipments moving into his warehouse as if for completed movements from the points of origin to the concentration point—that is to say, he pays the local rate to that point. Likewise, when outgoing shipments leave his warehouse, he bills and pays for them as if they were independent movements from concentration point to final destination. He then files with the carrier a so-called "transit claim", upon the basis of which a refund is made to him of such part of the sums collected as will adjust his total payments to the basis of the through rates from point of origin to final destination. The in-bound and out-bound shipments thus tied together by a transit claim do not, of course, ordinarily consist of the same cotton, for the outgoing shipments are generally composed of cotton in the even-running grades and staples that have been sorted out from the many incoming shipments of miscellaneous composition. All that is required is that the incoming and

outgoing tonnages shall balance, and in striking this balance, the rule is to count all incoming shipments that have been received during a period of twelve months prior to the outgoing shipment with respect to which transit is claimed. Until this privilege is claimed, the in-bound movement is in no way distinguishable from any other completed local movement to the concentration point; and if the cotton is consumed locally or is disposed of in some other way that necessitates no further recourse to the railroad, the movement of course retains its character as a local movement to that point.

One instance of disposition of merchandised cotton without recourse to the railroads for further service is frequently seen in cases of ocean shipment by merchants that concentrate their cotton at the ports. Upon shipments moving into their warehouses for concentration, the port concentrators ordinarily pay, as do interior concentrators, the local rates to the concentration point—*i. e.*, in their case, the local rates to some one or other of the ports. Like interior concentrators, too, they pay on out-bound rail shipments as for independent movements from concentration point to final destination and then claim transit to secure readjustment to the rates applicable upon through movements. On ocean shipments, however, the favorable location of their warehouses enables them, if they prefer, to make their own deliveries to the ocean carriers without seeking from the railroads any service beyond the local movements already complete.

The railroads nevertheless have always offered a shipside delivery service to these merchants. The charge for this service, as such, is, as already stated, the established switching charge from warehouse to shipside plus a charge for loading at the warehouse and unloading at the wharf (R., 322). The service rendered in return for these charges is, of course, the same as that which is obtainable under export rates by claiming the stop for concentration at the port warehouse as a transit privilege thereunder. A port merchant is therefore entitled, upon the payment of the charges for the

delivery service to shipside, to claim a refund that will reduce his total payments to the basis of the export rates (R., 323). However, since the switching and loading and unloading charges amount to only about 3 cents per 100 pounds for fully laden cars, few such claims were actually filed under the differential in rates that formerly existed, since there was little or no gain for the shipper in so doing in most cases (R., 43). The switching to shipside was practically always treated as an independent movement.

It is apparent that the amount of the charges for the shipside delivery service definitely limits, so far as port merchants are concerned, the possible differential between export and domestic rates; for if the differential should exceed the amount of these charges on a per-100-pound basis for fully laden cars, the port merchants would simply pay local rates to their warehouses and switching and loading and unloading charges from warehouse to shipside and so evade the higher rates. The amount of the differential, and of the shipside delivery charges as well, is also limited in the same way by the cost of drayage or other substituted transportation from the port warehouses to the wharves. On the average, that cost has been about 3 cents per 100 pounds. That is the fact that determined the amount of the differential fixed by the carriers between the local and export rates. When they fixed that differential, they really wanted a 9-cent differential, but they recognized that as a practical matter 3 cents was all that they could hope to collect (R., 331, 332).

The railroads never have regarded the 3-cent differential as adequate compensation for the services they render to port merchants in making deliveries from the port warehouses to shipside. They therefore always encouraged these merchants to make such deliveries themselves. Even where export rates had been paid in the first instance upon shipments moving into port warehouses, the carriers pursued this policy. Rather than have their equipment tied up in the shipside delivery service, they preferred to pay to the port merchants allowances for substituted transportation to shipside

which on the average equalled the differential that formerly existed between the local and export rates.

The port merchants, on their part, seemed generally content, until the inception of the present controversy, to pay local rates to their warehouses and dispense with railroad service from warehouse to ships. The methods in use by these merchants for reaching shipside were, and are, quite varied—drays, barges, hand trucks, motor trucks, electric trucks, and overhead trolley systems. The cost to most of the port merchants of making their own deliveries to the ships by one or another of these methods was at least no greater than the differential in rates or the allowances that the railroads paid. In those cases in which the cost was greater by reason of the great remoteness of certain of the port warehouses from the wharves, the shippers simply insisted upon the railroads performing the additional switching service to shipside.

The proportion of interior merchants that actually paid the export rates was much greater. With their cotton already merchandised at their interior locations, the longer free storage at the ports that was possible under export rates was attractive to them, and the acceleration of turn-over possible by employing through export billing was also an advantage. Nevertheless, some of these merchants were accustomed to ship to the ports under local rates. After merchandising their cotton in the interior, they would ship it on to some port warehouse for high-density compression and leave it to the port warehouse to make the delivery to the ocean vessels. The two methods persisted side by side among interior merchants; in some cases one method was used, in some the other.

The Inception of the Present Controversy:

All parties to this controversy, it is believed, admit, and the commission itself has distinctly found, that the present litigation was precipitated by the acts of certain of the port interests in constructing, first at Houston and Galveston and

later at New Orleans, concentrating warehouses and high-density compresses upon sites within the city-delivery limits of those ports that are nearer to the wharves than are the facilities of any of their competitors at those points.

The three firms of cotton merchants, Alexander Sprunt & Son, Anderson Clayton & Company, and Weatherford Crump & Company, all of which are appellants here, were among those constructing such facilities. Title to their new facilities at Houston, is held respectively by the Ship Channel Compress Company, the Houston Compress Company, and the Turning Basin Compress Company; but Alexander Sprunt & Son and Weatherford Crump & Company own 100% of the stock in the Ship Channel and Turning Basin companies respectively, and 99% of the stock in the Houston Compress Company is held by Anderson Clayton & Company. Practically all of the cotton bought and sold by the three parent companies is handled respectively through the three subsidiaries. The subsidiaries are all joined as parties appellant here.

Despite the fact that the commission refers to the appellants' warehouses as "waterfront" warehouses, no one of them is actually on the waterfront. In all three cases, the waterfront is occupied by public wharves and docks. The warehouses stand on adjoining plots *within the city switching limits*. In the case of the Ship Channel and Houston Compress warehouses, the adjoining wharves and docks are owned and operated by those companies; in the case of the Turning Basin warehouse, by the City of Houston. The status of all these wharves and docks is exactly the same as that of any other public wharf or dock at the port of Houston; all are open to the public for the handling, not only of cotton, but of any other commodity as well; at all a general wharf and dock business is solicited and carried on. The only relation that the cotton warehouses of the appellants bear to these public facilities is that of proximate location.

It is this proximity to the wharves that gives the appellants the advantage over their port competitors of which those competitors complain. The commission refers to the warehouses of the appellants' port competitors as "uptown" and "back from the waterfront", but by reference to the terminal map of the city of Houston (Exh. A-121, here in original form, R., 2), it will be seen that these appellations are not accurate. The plant of the Clinton Compress Company (V), for example, is just as near the waterfront as the plants of the appellants, (P) and (T), and it is even further from the uptown section of the city. It is likewise further from the yards of all of the carriers. This plant is not an isolated example. *Cf.* plants at points (A), (J), (M), (H), (K), (G). All of these are either near the waterfront or not uptown or both. The significant difference between them and the plants of the appellants is that there is no wharf in proximity to them.

When cotton has been merchandised in the warehouses of the appellants and is ready for export, it has of course still to be transported to the berth of the ship that is destined to carry it, just the same as if it had been merchandised at a so-called "uptown" warehouse. At the warehouse of the Houston Compress Company, the adjacent wharf is 1550 feet long and movement from warehouse to ship's berth may be as much as 3500 feet. The movement at this warehouse is accomplished by a system of trolley lines, which carry the cotton out of the warehouse, thence to the wharf, and along it to the berth of the ship destined to receive it. The cotton must then be hand-trucked from the trolley to the point in the ship's berth indicated by the ship's clerk. At the Ship Channel and Turning Basin warehouses, hand trucks and electric trucks are used in the same way, and the distance covered may be as much as half a mile. At the so-called "waterfront" facilities in Galveston and New Orleans, the situation and the methods followed are similar. These warehouses, like those at Houston, are within the ordinary switching limits of the respective cities. At all the so-called "waterfront"

facilities there is a substantial amount of labor involved in reaching "shipside" after merchandising is complete. That it is less than in the case of the "uptown" warehouses may of course be inferred from the fact of lesser distance from the wharves; but just how much less it is, the record does not disclose, and the commission did not find (R., 50, 51).

By paying the old local rates into their warehouses and making their own deliveries to shipside, the appellants were able to obtain by virtue of their proximity to the wharves an advantage over their "uptown" competitors in the cost of getting export cotton from producer to ocean vessels. Some such advantage would have existed under the old rates whether the "uptown" merchants had also followed this practice, as they had done prior to the present controversy, or had employed the railroads under export rates for both the line haul from producer to warehouse and the extra switching from warehouse to shipside; for the appellants' costs of making their own deliveries to the ships are undoubtedly less than the 3-cent charge or differential that the railroads collected for that service. For the same reason, the appellants undoubtedly enjoyed some advantage under the old rates over those interior merchants who were accustomed to move their cotton to the ports under export rates.

Despite the fact that this advantage, whatever it was, was obviously dependent upon the single fact that the appellants' warehouses were located in proximity to the wharves, the shippers opposing the appellants before the commission contended that the advantage amounted to undue preference and undue prejudice within the meaning of section 3 (1) of the Interstate Commerce Act. That, too, was the finding of the commission that was made the basis of the order herein attacked.

The Proceedings before the Interstate Commerce Commission:

That order was entered in a general investigation (I. C. C. Docket No. 14940) that the commission had instituted on the basis of representations from the shippers herein arrayed

against the appellants. Its object was to examine into the practices of the carriers in applying local and export rates to cotton shipments moving to the gulf ports already mentioned. By order of the commission there was combined therewith the proceeding upon a complaint of undue prejudice and preference in those practices (I. C. C. Docket No. 13991) that was then pending decision by the commission. The complaint in that proceeding originally had contained as well an allegation of unreasonableness, but that charge had been withdrawn before entry of the order of consolidation (R., 44).

The order instituting the general investigation defined its object as that of ascertaining

> "* * * (1) whether the practices now alleged to be followed by certain carriers and shippers in applying domestic rates, which are lower than the corresponding export rates, on cotton delivered to waterfront warehouses and subsequently exported, are authorized by existing tariffs, or whether such practices, or any of them, constitute illegal practices; and
>
> "(2) whether any change should be made in existing tariff regulations or rates in order to avoid and remove such undue preference, if any, that results or may result in favor of said waterfront shippers or localities, and such undue prejudice, if any, that results or may result against said uptown shippers or localities, that may be found to exist."

The reasonableness of the rates being charged by the carriers was not within the scope of the investigation.

On June 23, 1925, the commission filed its report. It approved the carriers' practice of applying local rates to shipments moving into warehouses located at points within the city-delivery limits of the ports, including, of course, the warehouses of the appellants. (The commission's decision upon this point is not in issue here.) The report went on to hold the differential between the local and export rates unduly preferential of the merchants whose warehouses are located at the ports at points near or adjacent to the wharves,

and unduly prejudicial both to those whose warehouses lie at points at the ports that are remote therefrom and to those whose warehouses are located at interior points. The carriers were ordered to fix the local rates and the export rates exclusive of wharfage at the same level. The findings and the order applied to the Texas ports only; no changes were ordered in the rates to New Orleans or other ports outside that state. The commission stated that it did not intend to condemn the carriers' practice of making allowances on export movements for drayage to shipside as substituted transportation, and concluded its report with the observation that

> "The investigation did not cover the reasonableness of the rates and our findings herein are not to be construed as authorizing the carriers to increase their present revenues. Rather, the rates should be so readjusted as to preserve existing revenues."

Commissioner Hall dissented.

Following the filing of this report and the entry of the order in pursuance thereof, various petitions were filed with the commission, seeking a reopening of the investigation. Among these were petitions from the Houston Cotton Exchange and Board of Trade and the Houston Chamber of Commerce, voluntary commercial organizations of which certain of the appellants are members. The petitions also asked that the investigation be broadened to include the practices of the carriers in granting concentration privileges and compression allowances at interior points. Interests at New Orleans sought further consideration of the practices at that port, and the carriers themselves represented that they could not comply with the commission's order without violating another of its orders entered in an earlier proceeding, known as *Galveston Commercial Association* v. *Alabama & Vicksburg Railway Company*, 77 I. C. C. 388 (Docket No. 11965). The carriers therefore asked the reopening of that proceeding as well, in order that it might be determined whether the earlier order should be modified to permit of compliance with the later.

In the earlier proceeding (Docket No. 11965), certain trade associations in Galveston and Houston had complained that the rates, both export and local, on cotton moving into those cities from points in Oklahoma, Arkansas, Louisiana, Tennessee, and Mississippi, were unjust and unreasonable, and, in comparison with the corresponding rates to Mobile and New Orleans, unjustly discriminatory as well. In the report thereafter filed, the commission made detailed findings as to the character of the individual rates that were under attack and entered an order accordingly. The general effect of the report and the order was to approve or establish as just and reasonable maxima certain specific local and export rates to the gulf ports of Houston, Galveston, Texas City, and New Orleans, and to approve the rate relationships between port and port that resulted from these rates as relationships that were non-discriminatory. The local and export rates attacked before the commission in the present controversy were among those so approved or established by the commission as reasonable maxima and as rates that were non-discriminatory as between the ports.

It has been stated that the order of June 23, 1925—*i. e.*, the first order in the proceeding involved in the present controversy—applied only to ports in the state of Texas. Compliance would therefore have disrupted the rate relationships that the earlier proceedings had approved and established between those ports and New Orleans, for the report of June 23, 1925, had made no new findings in reference to these relationships. In view of this situation, the commission on December 28, 1925, ordered this earlier investigation (Docket No. 11965) also "reopened and assigned for further hearing in connection with Dockets Nos. 14940 and 13991 on the question of whether the order therein should be modified".

In its other order of the same date, the commission said that Dockets Nos. 14940 and 13991 were

> "* * * reopened for further hearing in order to determine whether conditions exist which were not developed during the previous hearings, or whether changes

> have since taken place which would justify any modification of our findings in *Rates on Cotton to Gulf Ports*, 100 I. C. C. 159, and the order entered in Dockets Nos. 14940 and 13991 on June 23, 1925; to determine what rates shall be established to comply with our findings and order; and to determine the issues set forth in the next preceding paragraph hereof."

The "next preceding paragraph" ordered that the investigation in Docket No. 14940 be broadened

> "* * * to include therein the determination of (a) what services are accorded and what charges, payments or allowances are made by said carriers in connection with the handling of cotton at interior points, including payments for compression, and whether any of such services, charges, payments or allowances result or may result in unjust discrimination, or undue prejudice or preference, or otherwise violate any provisions of the interstate commerce act, and what changes, if any, should be made in such services, charges, payments, or allowances; and (b) whether the findings in said proceedings shall be extended to any ports in Texas, Louisiana or Alabama, other than those specified above [*i. e.*, other than Galveston, Houston, Texas City, Beaumont, and Port Arthur, Texas; New Orleans, Louisiana; and Mobile, Alabama]".

On the theory that the proposal that the commission was to fix a definite level for the equalized rates must necessarily involve the question of reasonableness, counsel for the appellants sought at the rehearing to introduce testimony bearing upon that issue. The examiner refused at the time to rule on the admissibility of the testimony, but stated his opinion that reasonableness was not in issue. Counsel for the commission has since consistently taken the same position; and in its report of April 4, 1927, covering this rehearing, the commission itself definitely agreed with that view (R., 65).

In that report, which as a whole is made a part of the order thereupon entered, the commission affirmed its earlier

finding of undue prejudice and preference in the existing local and export rates to the Texas ports, and extended that finding to include the Louisiana ports as well; and despite its repeated statements as to the scope of its investigation and despite, also, its omission of any finding of unjustness and unreasonableness in either export or local rates, it undertook to remedy the supposedly unlawful situation by means of an order to the carriers to increase their local rates by 1 cent per 100 pounds and to lower their export rates (exclusive of wharfage) to the same level. The report also held that allowances to the appellants under export rates for substituted transportation from warehouse to ship's berth would be unlawful if made to cover movements from their warehouses to adjoining wharves and piers, but authorized and approved allowances in other cases of substituted transportation from port warehouses to shipside. The report also approved the granting of free concentration privileges in transit at interior points and the making of allowances at such points for the compression of cotton moving under compressed-in-transit rates. (The commission's decision in respect to concentration privileges and compression allowances at interior points is not in issue here.) Commissioner Hall again dissented from the majority position save in respect to the decision upon interior concentration privileges and compression allowances.

The Present Suit:

After the filing of the above report and the order entered in pursuance thereof, the present appellants brought suit in the United States District Court for the Southern District of Texas, Houston Division, asking both temporary and permanent injunctions against the enforcement of the commission's order.

The prayer for a temporary injunction was pressed to hearing on July 12, 1927, before a statutory court of three judges sitting at New Orleans. The temporary injunction was obtained, and by agreement of the parties, the case was

submitted to the court for final determination. Final judgment was thereafter rendered on December 5, 1927. By that judgment the temporary injunction was recalled and the permanent injunction refused. The court rested its approval of the equalization order upon its opinion (1) that the commission's finding of undue prejudice and preference was valid in law; (2) that although the commission has not the power to fix rates to remove undue prejudice or preference without a hearing upon, and a determination of, the reasonableness of the rates ~~displaced~~ so fixed, nevertheless justness and reasonableness for the purpose of removing the undue prejudice or preference, as distinct from justness and reasonableness *per se*, is all that need be investigated or determined by the commission in such a case; and (3) that an investigation and determination of such scope had occurred in the instant case. It rested its refusal of relief in the matter of allowances upon its opinion (1) that no order upon allowances had been entered, and (2) that even if an order thereon were deemed to exist, it was nevertheless a "negative order" from which there could be no relief.

Outline of the Argument.

I. There is no evidence to support the commission's findings of undue prejudice and undue preference, either as between the appellants and the so-called "uptown" sort merchants or as between the appellants and the interior merchants. The order for an equalization of rates, both as between the appellants and the "uptown" merchants and as between the appellants and the interior merchants, is in direct conflict with the evidence that the record contains, with facts that are undisputed, and with the commission's own findings of specific facts. The commission's finding is without basis under the transportation standard, and the order for equal rates is without any warrant. The order exceeds the commission's statutory power and should have been enjoined.

II. Even if the commission's findings of undue prejudice and undue preference were valid, and even if an equalization of rates were warranted, the commission would still be without jurisdiction to prescribe the level at which equalization should take place in the absence of a valid finding after a full hearing that one or both of the rates pre-existing were unjust and unreasonable and a valid finding after a full hearing as to the justness and reasonableness of the rates prescribed.

III. The commission's prohibition of allowances to the appellants for substituted transportation from their warehouses to adjacent wharves is arbitrary and in violation of law in view of the commissioner's concomitant approval and authorization of allowance for similar substituted transportation in all other circumstances. The necessary result of the commission's order is to subject the appellants to undue prejudice and to accord to their so-called "uptown" port competitors an undue preference within the meaning of the law. The enforcement of this portion of the commission's order should also have been enjoined.

IV. The sole aim of the commission in the present case was to equalize commercial conditions within the export cotton trade. The sole effect of its order in all its aspects was to deprive the appellants of the economic advantage of their superior location. The commission's order was in excess of the power that a governmental body can constitutionally exercise.

CONCLUSION: The court below erred both in its refusal to enjoin the commission's order for an equalization of rates and in its refusal to enjoin its order prohibiting allowances to the appellants for substituted transportation from their warehouses to adjoining piers. The decision below should therefore be reversed, and the case remanded to the court below with instructions to grant the relief for which the appellants prayed.

I.

There is no evidence to support the commission's finding of undue prejudice and undue preference.

The order for an equalization of rates for the two types of service is in direct conflict with the evidence that the record contains, with facts that are undisputed, and with the commission's own findings of specific facts.

The order exceeds the commission's statutory power and should have been enjoined.

Most of the facts in the present case are undisputed. There is, and can be, no denial that everything obtainable under local rates is also obtainable under export rates, and there is no denial that the export service includes, in addition, certain elements not given in the corresponding local service. It is not denied that shipside delivery, through billing to overseas points, and the privilege of port concentration on rail movements that terminate at the ports are available only under export rates. It is not denied that under export rates shippers have the free use of the carriers' cars for storage at the ports for anywhere from twice to nine times as long as under local rates; or that indefinite further use of the cars is possible under export rates at the nominal cost of $1 a day, whereas shippers under local rates pay $2 for the first four days of an excess detention and $5 a day for each day after that. And it is not denied that under export rates the whole service is expedited to facilitate connections with the ocean vessels.

There is likewise no dispute that the appellants enjoyed an advantage under the rates that the commission's order displaced; there is none that they secured that advantage by building their warehouses on sites within the city-delivery limits of the ports that were as near as possible to the

wharves and therefore as convenient as possible for direct dealing with the ocean carriers; and there is no longer any dispute that the appellants and all other merchants with warehouses within the city-delivery limits of the ports are entitled to bring cotton from the originating points to those warehouses under local rates. That, the commission decided in its first report, and the correctness of that decision is not disputed here.

The disputed points that will be considered in the first division of this brief are as follows:

1. Whether the railroads may legally collect *anything more* than the local rates when, after the completion of such a local movement to a port warehouse, they are asked by the shipper to return and get the cotton and reswitch it to the berth of the vessel that is destined to carry it overseas.

2. Whether, if *something more* than the local rates may legally be collected in such cases, 3 cents per 100 pounds is too much.

3. Whether the railroads may legally collect *anything more* than the local rates from merchants who stop their export cotton for concentration at interior points and, in sending it on to the ports, ask, in addition to the services given under local rates, the services of ship-side delivery, through overseas billing, long free storage at the ports and a general expediting of the portward movement to facilitate connections with the ocean carriers.

4. Whether, if *something more* than the local rates may legally be collected from such shippers, 3 cents per 100 pounds is too much.

Upon the answers to the above four questions depend the legality of the commission's finding of undue prejudice and preference and the legality, also, of its order for an equalization of rates. In the state of the record and the commission's findings, these questions are questions of law and not of fact. They will be considered in the order stated.

(a) *There is no basis in law or in fact for an equalization of rates as between the appellants and their so-called "uptown" port competitors.*

In getting their cotton from the producer into the hands of the ocean carriers, the only services that the appellants ordinarily ask or receive from the railroads are the following:

(1) a line haul from the producer to the port;

(2) a delivery at a city-delivery point at the port—*i. e.*, at one of the so-called "waterfront" warehouses;

(3) the service of unloading or an allowance therefor; and

(4) the storage and averaging privileges allowed upon local movements.

The "uptown" merchants that employ the export service also ask and receive these same services, and they ask, in addition, that the railroads return and make another delivery to shipside. That additional delivery means that the carriers must sustain the following items of extra cost:

(1) car detention at the warehouse during loading for the shipside movement;

(2) switching out from the warehouse;

(3) switching in at the berth of the ship that will carry the shipment;

(4) car detention during unloading; and

(5) incidental accounting and checking services.

Or it may be said, if preferred, that the extra service is a transit stop at a city-delivery point; but the extra costs remain a switching-in, a switching-out, car detention during unloading and loading, and incidental accounting and checking.

These are the services inevitably involved on every transit stop. The commission recognized this. It said (R., 71):

> "The services rendered by the carriers in the concentration of cotton are generally the same as on other traffic accorded transit."

And upon the basis of the existence of these costs, the commission determined that preservation of the net revenue of the railroads required equalization of rates at a point 1 cent per 100 pounds above the level of the pre-existing domestic rates (R., 65-66).

The existence of extra costs for the carriers as the result of the "uptown" shippers' asking the privilege of port concentration must therefore be taken to be established, and the value of that privilege to the "uptown" merchants has not been denied. Yet despite these facts, the commission prescribed for the "uptown" merchants rates no higher than the appellants pay.

Its reasons for that action are nowhere very explicitly stated. The nearest to an explicit reason is the observation in the first report (R., 48) that

> "* * * usually the same rate applies to all industries on the same road within the switching limits of a municipality * * *",

and the statement, also in that report (R., 49), that

> "* * * the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge * * *".

It is to be inferred that the above statements were intended as a justification of equal rates only as between the appellants and the "uptown" merchants, since only the latter are within the switching limits of the same municipality as the appellants.

But the statements seem irrelevant; for "the same rate applies to all industries on the same road within the switching limits of a municipality" only when the services that such industries ask are the same, exclusive of the one element

as to which all sites within a switching area are by its establishment artifically equalized. That one element is the element of accessibility to and from the rail carriers establishing the area, on shipments incoming and outgoing over their lines. In this respect, all of the port shippers were already on an equal footing under the rate relationship that the commission condemned. One rate already did "apply for all deliveries within the usual switching limits of the ports". All port merchants were able to bring cotton to the port from any single point and secure delivery at any port warehouse or any other point within the city switching limits at the same rate—*i.e.*, the local rate to the port from the originating point concerned. All such shippers were likewise able to make shipments to any chosen destination from any port warehouse within the city switching limits at exactly the same rate; and this was true even of movements from the port warehouses to shipside, for there was but one differential for all shippers between local and export rates. The one thing they could not do was to get, without cost, this extra movement to shipside. Port concentration on export movements had to be paid for when claimed, and it is submitted that there is nothing in the fact of their location within the same cities as the appellants that can justify their receiving that privilege free. There is therefore nothing in that fact to justify the order for equal rates.

That is the only ground of the commission's action that is at all explicit; but its insistence at several points (R., 48, 65-66) on the fact that a concentration stop at interior points was available to the appellants and other shippers using local rates rather indicates that it thought the costs of the port privilege under export rates not really additional in character, and so, no justification for a difference in rates. It seemed to assume that the port privilege was always claimed in place of the similar privilege at interior points that was available to shippers using local rates.

That notion is not accurate. It is of course quite true that cotton moving into the appellants' warehouses under local

rates can be stopped without extra cost at interior points, and it is quite true that the privilege of such stops is sometimes claimed upon such cotton. Some of the cotton the appellants export is purchased from interior merchants who have already merchandised it at interior points. Upon such cotton the seller's merchandising stop at the interior point is ordinarily claimed as a transit privilege upon the through movement from producer to port under domestic rates. But this same practice is followed by "uptown" merchants on export cotton similarly purchased, and under the rate adjustment that formerly existed, it was possible, in addition, for the "uptown" merchants to have such cotton switched to shipside upon payment only of the switching, loading and unloading charges already mentioned. Since these were in most cases no more for fully laden cars than the differential between export and domestic rates, the "uptown" merchants were enabled in effect to get from the railroads both an interior and a port stop for the money equivalent of the export rates.

Nevertheless, since a few of the "uptown" merchants, very far from the wharves, could not accomplish this, it will be assumed for the sake of this argument that the costs of the port privilege under export rates were never additional to the costs under the corresponding local rates and that the port privilege, when claimed under export rates, always replaced the interior privilege available under the local rates to the ports. But even so, there is no basis in fact or in law for the commission's order.

The appellants in the proceeding before the commission urged that free transit concentration should be abolished at all points other than those at which the carriers themselves stop the cotton for compression. They recognized, as did also the commission in its second report, that

> "The services of the carrier in handling cotton for compression are substantially the same as for concentration in so far as the movement into and out of the concentration or compress points is concerned, but, when

> the cotton is compressed the compress companies are required to load and unload the cars" (R., 71),

and that

> "When concentration takes place at a compression point, there are scarcely any transportation services rendered by the carriers in addition to those rendered in connection with stopping cotton for compression" (R., 75).

They recognized that these facts might justify free concentration at the railroads' compress points, but they could not see what there was to justify free concentration privileges elsewhere. For it is obvious that stops at points other than railroad compression points are for the shipper alone, and the substantial costs that such stops involve are absolutely additional to the costs that the carriers would sustain if they were not claimed.

The commission, however, pointed out that interior concentration is an affirmative benefit to the carriers even when claimed elsewhere than at their compression points. It said (R., 75-76):

> "Interior concentration is an important factor in regulating an even flow of traffic and may be likened somewhat to a series of reservoirs in supplying an even flow of water for irrigation purposes. Without interior concentration, the cotton crop would have to be shipped during the gathering season which is also the grain-moving season, and the resultant car shortage in the interior and congestion at the ports, particularly at the mixed-shipment platforms, might seriously disrupt transportation and general business activities throughout the entire cotton-producing section.
>
> In the assembling of cotton at the interior compresses where concentration is authorized, the carriers can and do use many cars otherwise unfit for service. Ordinarily, the length of haul from the originating point to the compress and concentration points is relatively short, and during the peak of the movement the carriers use cattle cars, bad-order box cars with leaky roofs, flat cars and

> sometimes open equipment which could not be used for hauls to the ports or distant destinations."

Earier in the report (R., 70), the commission had also said that

> "Concentration [meaning interior concentration] has been also of substantial advantage to the carrier as it increases the car loading beyond the transit point * * *".

On the basis of these findings, the giving of first concentration without cost at interior points was held to be justified. The appellants accept that decision as sound in fact and law.

Now it should be noted that the real effect of the old local and export rates was to charge for first concentration in transit when the privilege was claimed *at the ports on export movements,* but to allow first concentration in transit without charge in other circumstances. Thus, first concentration in transit was given without charge *at interior points* both to port and interior merchants *upon domestic movements that terminated at the port,* and it was also given without charge *at the ports* to both types of merchant *upon domestic movements that extended beyond the ports.* It will presently be shown that the higher export rates that formerly existed were amply justified in the case of interior merchants by the cost and value of the expedited service to shipside, the through billing to overseas points, and the greater liberality of the storage and average provisions of the export service. It follows that first concentration in transit must be deemed to have been given without charge *upon export movements* to interior merchants *at interior points,* and it has been shown that it was given without charge *at interior points* to "uptown" port merchants upon export cotton *under what was the pecuniary equivalent of the export rates.* The "uptown" merchants have, generally speaking, little use for the through overseas service afforded by the carriers under export rates; their interest is mainly in the port concentration privilege and the subsequent switching movement to shipside. Those

are the items of the extra service under export rates that they customarily claim. The carriers must therefore be deemed to have collected the 3-cent differential from them mainly as compensation for the services rendered in connection with the port privilege and shipside delivery. That, at least, is the best face that can be put upon the "uptown" shippers' complaint against the railroads. If that is the true situation, as it seems to be, it constitutes the only instance under the old rates in which the carriers charged for first concentration.

The commission apparently sensed that this was true, and although it did not say so in so many words, it apparently felt that the carriers should not be permitted to sell to one shipper what they gave without charge to another. But that without more is not the law as it has been expounded by this court.

In *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, the carriers were accustomed to pay allowances of ¾ of a cent per 100 pounds to grain elevators for elevating grain at connecting points on through traffic in connection with its transfer at such points from their own to the cars of connecting lines. Some of the elevators so employed belonged to merchants who were shippers of the grain so elevated. These merchants were accustomed to take the opportunity that elevation afforded to clip and otherwise merchandise grain of their own that passed through their hands. Complaint was made by competing grain merchants who were without elevators at the connecting points that the payment of allowances under these circumstances amounted to unlawful preference, since the shippers receiving them were using the opportunity resulting as a transit stop for their own benefit. By reason of these allowances, the merchants receiving them were getting the opportunity of performing their merchandising operations for at least ¾ of a cent per 100 pounds less than their less favorably located competitors. Whether those competitors had also to pay an extra charge for their transit stops does not appear from the

opinion. It was held by this court that the allowances could be paid without undue preference.

The case establishes that the same transit privilege may be received by different shippers on different terms if in one case there is a benefit accruing to the carrier and in the other there is not; but if the benefit accrues to the carrier in both cases, the terms upon which the privilege is given must be the same. That is established by the later case, *Union Pacific Railroad Company* v. *Updike Grain Company*, 222 U. S. 215.

In that case, the same practices were involved as in the *Diffenbaugh* case; but the carrier therein had refused to pay allowances to the complaining shipper, and suit had been brought for their recovery. The carrier pleaded that the cars emptied by elevation had not been returned to it within forty-eight hours as its allowance tariffs required. It was shown, however, that this failure was due to the rules and practices of a voluntary railroad association of which the carrier in question was a member; it was not due to delay by the shipper. It was held by this court that the allowances would have to be paid. The case was put distinctly upon the ground that the railroad had received the same benefits—elevation of grain and release of equipment—as in cases in which allowances were customarily paid. That, it is submitted, is always the condition precedent to a valid order for equal treatment. Identity of service is not enough if a benefit to the carrier accrues in the one case but not in the other.

The appellants submit that it follows that the only basis upon which the commission could lawfully have made an order in the present case for equal rates as between the appellants and the "uptown" merchants would have been a finding that the carriers receive the same benefits from first concentration at the ports upon export movements that they receive from first concentrations in other circumstances.

There was no such finding. The finding as to the benefits to the carriers resulting from transit concentration was distinctly limited to concentration at interior points, and as a matter of fact, those benefits can not accrue to the carriers

from concentration at the ports unless that concentration is succeeded by a further rail movement of substantial length. But that necessary condition excludes all instances of port concentration in which the privilege is claimed under export rates, for upon export shipments the only rail movement subsequent to concentration is a switching movement to shipside. That movement is too short for better loading of cars to be of importance to the carriers; the case as respects concentration is the same on short-haul traffic as it is as respects compression. And since the rail movement from producer to shipside is practically completed before concentration occurs, it is plain that no lessening of the peak load of the cotton traffic or of congestion at the ports can possibly result. Practically speaking, transit concentration under export rates, when claimed at a port, is not transit concentration at all, but concentration at the destination.

From that fact it results also that port concentration under export rates is invariably a source of extra expense to the carriers, for such concentration never coincides with the compression in transit that the carriers themselves effect. It is true that some transit compression is performed for the railroads at the port warehouses; but if the port be near enough to the point of origin to be designated as the carriers' compression point, hauls like the export movements that permanently terminate at the port will obviously be too short to warrant absorption of compression costs by the railroads. These costs, it will be recalled, are not absorbed by the carriers where the "flat" rate is less than 56 cents (R., 70). On the other hand, if the hauls to the port be long enough to warrant compression by the carriers, the port will never be designated by them as their compression point. The cotton will be stopped for compression long before the port is reached.

First concentration at the ports under export rates is thus unique: it always involves substantial extra costs for the carrier, and from it no benefit to the carrier can ever accrue. It is therefore no wonder that the commission laid no basis

in fact for its order for equal rates. Without that factual basis there was no warrant for that order as a matter of law; for the carriers were plainly entitled, if they chose to do so, to collect *something more* than the local rates as compensation for the port stop on export movements.

(b) *There is no evidence to support the commission's finding of undue preference and undue prejudice as between the appellants and the uptown merchants.*

It has been mentioned that the carriers collect a fee of 3½ cents under all cotton tariffs for every stop by the shipper beyond the single stop for which, under those tariffs, provision is made. It has been shown that the costs incurred by the carriers on the port concentration stops claimed by "uptown" merchants on export movements are those characteristic of transit stops in general. It has been shown that that fact was recognized by the commission (R., 71). It follows that the costs of the port stops are exactly the costs of the shippers' second stops for which the 3½-cent fee is charged. The two stops are also alike in that neither ever benefits the carriers and neither ever coincides with the carriers' own stops for compression. The fee for shippers' second stops is approved by the commission in this very case (R., 48-49). If that fee is justified, and it undoubtedly is, it follows *a fortiori* that 3 cents is not too much for an indistinguishable service for the "uptown" merchants.

That is the amount that the carriers charged through the differential in rates for the port concentration stops on export movements. There is in the record no evidence whatsoever of any transportational distinction between these export port concentration stops and shippers' second stops on cotton movements generally. In the absence of such evidence, a finding of undue prejudice and preference based upon the carriers' practice of making a 3-cent charge for the port concentration stops on export movements coupled with an approval of the 3½-cent fee for the second stops generally, is capricious and arbitrary and without any basis in fact or law.

(c) *There is no basis in fact or in law for the commission's order for an equalization of rates as between the appellants and the interior merchants.*

It has been pointed out that in getting their cotton from the producer into the hands of the ocean carriers, the only services that the appellants ordinarily ask or receive from the railroads are the following:

(1) a line haul from the producer to the port;

(2) a delivery at a city-delivery point at the port—*i. e.*, at one of the so-called "waterfront" warehouses;

(3) the service of unloading or an allowance therefor; and

(4) the storage and averaging privileges allowed upon local movements.

Interior merchants employing the export service to get their cotton to the ships receive identically the same line haul and the same unloading service; but in place of the local storage and averaging privileges, they receive the more generous similar privileges of the export service, and in place of delivery at a city-delivery point, they receive delivery at shipside. In addition, they receive the through billing service to overseas points, the expediting of the portward movement to facilitate ocean connections, and the privilege of transit concentration at interior points. The last, of course, is not important, since the appellants accept as correct the commission's decision that the transportational benefits of interior concentration are sufficient to justify the carriers in allowing it to shippers without any charge. There nevertheless remains a differential in service consisting of the following four elements:

(1) port delivery at shipside in place of a city-delivery point;

(2) the greater liberality of the storage and averaging privileges of the export service;

(3) the through export billing service; and

(4) the expediting of the portward movement.

The value that shipside delivery and long port storage have for interior shippers is obvious. It is, of course, the result of the natural disadvantage of their interior location for engaging in the export trade. If the railroads did not offer the service of shipside delivery to these merchants, they would have to provide for the making of their own deliveries to the ocean carriers through forwarding agencies or port branches; and if generous storage and averaging privileges were not given these merchants under the railroad's export service, they would have to purchase or hire storage space at the ports to hold their shipments pending arrivals and departures of the ocean vessels. The need of the interior shippers for more generous free time and averaging privileges was described before the commission by J. L. West, a witness representing them. He said (R., 330):

> "In my experience as a railroad man, we were confronted for a good many years with the representations of shippers and steamship lines that they were not given a fair amount of free time on through shipments, and I think they were right. It is necessary from the standpoint of the actual physical handling of traffic that there be longer free time on traffic going through from railroad to ship than on traffic for destination at a local place in the port. That is true because of the uncertainty of the arrival and departure of ships and of the arrival and delivery of the cotton by the rail carrier with regard to the water carrier's schedule. The interchange of traffic between water and rail carriers involves contingencies that ought to be taken care of by a larger allowance in free time. The only reason for the difference is that the connection between rail and water carriers is uncertain and a little more leeway is necessary."

Another witness, Benjamin Clayton, cotton merchant, described as follows the advantages to interior shippers of the railroad's export service (R., 299):

> "By the use of the export rates, the merchant in the interior is enabled to put his cotton aboard cars, ship it through to the steamer direct, obtain his port bill-of-lading, without the necessity of taking possession of his cotton in any way; and without the responsibility and expense of finding the necessary resting place, transfer place, switching, and without any liability for demurrage."

Not a single witness denied the peculiar value that the export service has for interior merchants.

The through overseas billing service that the carriers offer under export rates adds another element of very great value for this class of shippers. In the language of the commission itself in another case (*In the Matter of Bills of Lading*, 52 I. C. C. 671, 731),

> "The advantages of the through export bill to the shipper are important. Being a bill for through transportation, more favorable demurrage rules apply at the port than apply on domestic traffic. Moreover, if export traffic were moved to the port under a domestic bill of lading, the shipper would be obliged to take out a ship's bill of lading. This would often be a great disadvantage in financing his operations, for he could not draw a draft against his foreign customer until he had gotten this ship's bill of lading, whereas the through export bill may be negotiated immediately as is the common custom."

J. L. West, who represented the interior shippers before the commission, said frankly (R., 192):

> "The through bill is the desirable document, it saves us money."

There is nothing in either of the reports in the present case to indicate that the commission had changed its mind. The single reference to the question of value in the two reports is that contained in the following passage in which the commission no more than notes the appellants' contentions:

"The waterfront facilities and the carriers contend that the transportation costs connected with the carriage of shipments to the ports under through export bills of lading are greater than those connected with domestic shipments to the ports, and that the value of the service to the shipper is greater" (R., 46-47).

There was elsewhere no finding on value and no consideration of it. Yet the commission itself has always said that value to shippers is "the most important factor in fixing rates". *Imperial Coal Company* v. *Pittsburgh & Lake Erie Railroad Company*, 2 I. C. C. 618, 636; *Coke Producers Association of Connellsville* v. *Baltimore & Ohio Railroad Company*, 27 I. C. C. 125, 132; *Mason Valley Mines Company* v. *Western Pacific Railroad Company*, 100 I. C. C. 180, 195.

Much the same situation exists with respect to costs. J. D. Martin, chief clerk in the division freight office of the Santa Fe Railway at Fort Worth, an interior point, described in detail the costs of the through export billing service. He said (R., 186 to 187):

"* * *. On a bill of lading on 100 bales of cotton from Fort Worth to Liverpool, England, we wire the general freight office, giving particulars as to the ocean contract and rates, and ask that that be confirmed. That is a contract previously made by the shipper with a steamship agent at the port. That requires a 50-word message. We must then receive a telegram from the general freight office, telling us that the contract has been confirmed by the steamship agent, and then we have authority to sign the bill of lading. We then call the compress companies and secure the lading of this cotton, getting the car numbers and condition of the cotton. We must make out and sign 10 or 12 copies of the bill of lading, and then affix a form of validation and the office stamp. We then call the shipper by telephone and tell him that the bill of lading is complete and he sends for it or we send it to him by the porter and keep two copies for our office records * * *.

From the two office copies of the bill of lading, we are required to make eight more. Two copies for the steamship agent, one copy for the general freight office,

and one copy for the export agent. We thus make an average of 20 copies.

As a rule the charges from point of origin to destination are prepaid on cotton moving under an export bill of lading. Usually we collect at the interior points of origin, not only our own freight charges to the port but also the ocean freight charges. That makes our office responsible for a great deal of money. In some cases these confirmations designate the policy in which the cotton must be shipped from the interior. We have bills of lading calling for shipment on a specified steamer. The confirmations are usually one or three classes, prompt shipment, meaning within 10 days, immediate shipment, meaning within one or two days or so, or stating a date on which the shipment must be at the port. The railroad must see that the cotton moves. We do not have that duty in connection with domestic shipments to the port.

The export bill of lading does not show the date on which it is to sail. The contract between the owner of the cotton and the steamship agent or the owner of the steamship sometimes specifies the identical steamer, but ordinarily it calls for 'early November steamer shipment' or similarly. If they can't load it in one, they load it in the next one that may go 15 or 20 days later."

Other witnesses testifying in reference to the same matter were Warrenberger (R., 188-189), Booth (R., 182-185), Kennedy (R., 169-170), Witherow (R., 167-169), and J. L. West (R., 193). The last named witness, who represented the interior merchants, admitted without hesitation (R., 193) that

> "* * * the through bill is issued by the railroad by greater effort than the domestic bills of lading."

The testimony as a whole is in accord that connections between rail and ocean carriers involve many peculiar contingencies that inevitably entail extra labor for the rail carriers that make them.

In relation to the costs resulting from the greater liberality of the storage and averaging privileges of the export service, it was testified without contradiction that during the

heavy movement of cotton in the late fall and early winter, the cotton shipments fill up the railroad yards at the ports with resultant blockades and congestion and continual long delays in the unloading of cars. Booth (R., 243); Kennedy (R., 169). A notion of the degree of this congestion can be gathered from Exhibit A-186 (Ex. Bk. 224), which shows the monthly averages of car detentions upon shipments moving into the port of Galveston under export rates during the year from August 1, 1924 to July 31, 1925. At the peak of congestion in January, the average for the month for shipments moving under the through export bills is shown to have been 5.27 days for each of 969 cars. The table also shows that during the three months of November, December and January, when the cotton movement ordinarily is heaviest, 3,241 cars of cotton moved into the port under through bills and were detained there a total of 13,835 days, or an average of 4.27 days per car for the whole period. The table also shows that the average detention was nearly as great upon shipments moving in under local bills marked "for export". Such shipments, of course, are also export shipments; they take the export rates.

If the above averages seem small in comparison with the maximum possible detentions of 18 days and 12 days respectively for the two types of export shipment, they should be compared with the car detention averages shown in *Export Freight Free Time,* 47 I. C. C. 162, 171, for the port of New York during the "extreme and unprecedented congestion" (*ibid.* 166) of the war-time years of 1916-1917. Even for that period the average detention at New York was only 8½ days. It must be remembered that an average detention, seemingly low, may conceal many exceedingly long individual detentions. This the analyses of car detention averages at page 171 of the report in *Export Freight Free Time* will clearly show.

For all such detentions within the limits of 18 and 12 days respectively for the two types of export shipment, the only compensation that the carriers receive is that which is con-

tained in the transportation rates themselves. For such detentions there is no demurrage; practically speaking, the railroads insure interior shippers under export rates against the payment at the ports of any substantial storage costs at all. In times of extraordinary congestion, the resulting burden for the carriers may be very great (*cf., Export Freight Free Time, supra*), and the brunt of the burden always will fall upon them when they need their equipment most. This is true not only in times of extraordinary congestion as in the case last cited; it is true annually when the cotton movement is at its peak, for that peak, it will be recalled, comes at the season when movements of grain and other crops are also at their highest point.

The position of the commission on the question of the extra costs resulting for the carriers from the through billing, the longer free time, and the deliveries at shipside should be carefully noted. The commission nowhere denies the existence of such costs. Rather it seeks to belittle them as "minor" and "incidental" (R., 62), and it speaks of them as "little, if any, more" (R., 61), and "little, if any, greater" (R., 47); but despite the fact that the order it entered was an order for equal rates as between the appellants and the interior merchants, it nowhere finds that the costs of service are really the same for these two competing groups of shippers, and the conclusion it reaches is merely that

> "The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates" (R., 47).

Such a finding will obviously not support an order for equal rates; for if there is any difference in costs some difference in rates is plainly justified.

The finding is objectionable for another reason: it disregards the burden of proof as enunciated by this court in *United States* v. *Illinois Central Railroad Company*, 263 U. S. 515, 521:

> "To bring a difference in rates within the prohibition of section 3, *it must be shown that the discrimination practiced is unjust* when measured by the transportation standard. In other words, *the difference in rates cannot be held to be illegal, unless it is shown that it is not justified* by the cost of the respective services, by their values, or by other transportation conditions." (Italics added.)

It is not enough that the record be *un*convincing that the difference in rates *is* justified, it must *be* convincing that they are *not* justified. If the rule were otherwise, allegation and suspicion would take the place of proof.

Moreover, the commission's statement that the costs of the extra services are "little, if any, greater" is based upon a clear mistake as to the character of certain evidence that it had before it, and upon a misconception, as well, of the probative force of the evidence it supposed to exist. The car detentions under the export storage privileges are obviously the largest single item of cost among the extra services rendered to interior merchants. Of these detentions, the commission said (R., 47):

> "* * * the Galveston interests show that the average detention of cars containing export shipments is little, if any, greater at that port than the average detention of cars containing domestic shipments."

The evidence to which the commission referred is that contained in Exhibit A-186 (Exh. Bk. 224), already mentioned. That exhibit contains no information at all on car detentions at Galveston upon domestic shipments, *i. e.*, shipments moving under local rates. What the exhibit does show is average detentions on shipments to that port of the two classes that move under export rates, *i. e.*, shipments under through export bills and shipments under local bills marked "for export". That of course is quite another matter. But even if the record did show equality in average car detention between local and export movements, that would be no evidence of

equality in carriers' costs for the storage and average privileges of the two types of service. Equality in cost of those privileges would follow from equality in car detentions *for which no demurrage had been collected.* There was no evidence of that character before the commission.

In the main, the commission seemed much more interested in finding some legal justification for a disregard of service cost and service value than in establishing the equality of these under the two types of service. This is well shown by its utter disregard of the question of value; for, if there was any difference at all in point of cost, the undoubted value to interior merchants of the extra services under export rates would certainly have justified the higher charge that the carriers made. Low cost is not controlling in the face of high value. If it were, the rate for a car of silk and a car of coal would be very different from what they are.

The first reason stated by the commission to justify its disregarding service cost and service value is that

> "The export rates are not confined in their application to shipments moving on through export bills of lading, and the added elements of cost mentioned above [meaning greater free time] would vary per unit of 100 pounds, dependent on the size of the shipment."

The implications intended were (1) that the undoubted extra costs of the through overseas billing service might not be considered by the carriers in fixing rates because some interior shippers preferred to ship under local bills marked "for export" under which the extra labors growing out of the through overseas service were not involved, and (2) that the cost of the longer absolute and average free time under export rates might not be considered because its amount was variable from shipment to shipment.

But the appellants know of no principle of law that prohibits a carrier from considering variable costs in fixing rates. If that were the law, carriers would be obliged to disregard completely such items as switching within urban

switching areas and lighterage within such lightering areas as New York harbor. Yet it is beyond question that charges for such services may be added into transportation rates on the basis of average cost. Moreover, under "any guaranty" rates such as here involved, even the costs of the line haul "vary per unit of 100 pounds, dependent upon the size of the equipment" and the consequent loading of the cars; but that fact would hardly be urged to justify a disregard of line-haul costs in fixing rates.

Neither is it material that a cost may sometimes be absent altogether. As the commission says in this very case (R., 75),

> "The rates and charges of a railroad can not be based entirely on the cost for each particular character of service rendered. If such was the case, the passenger with baggage would pay more than the passenger without, and the rates to large industrial centers would vary dependent upon the character of terminal service employed, including connecting line switching."

The case would be different if grouping the service that includes the inconstant element with the service that lacks it gave rise to prejudice or preference between groups of shippers respectively needing and not needing the item in question. But that is, of course, not true here; for admittedly the same interior merchants sometimes use, and sometimes do not use, the through bill of lading. There is certainly nothing in the facts to which the commission adverts that will justify a disregard in the present case of the cost and value of the longer free time and through export billing.

For its prescription of equal rates the commission gives just one other reason that can be deemed to refer to equalization as between the interior merchants and the appellants. It says (R., 48) that

> "Usually * * * shipside rates, if higher than the domestic rates, are only enough higher to cover the strict wharf or pier charges, such as handling, from car to shipside, and wharfage. The rates under consideration are not so made. Rather there is a difference of 3.5 cents in

the rates not accounted for by the wharf or pier charges. Unloading charges are absorbed on both domestic and export shipments."

The reference to what is "usual" in the differential relationship between export and domestic rates of course refers to export and domestic rates in general, *i. e.*, to export and domestic rates on commodities other than cotton. As a reason for equal rates, the statement can have been intended to relate only to equalization as between the interior merchants and the appellants since the privilege of a port stop, such as that which constitutes the chief differential of service in the case of the "uptown" merchants, is not a usual component of the services under export rates on other commodities.

It undoubtedly is true in the case of many commodities that shipside rates are no higher than the domestic rates for the same line haul; they are in fact sometimes lower. But the reason for that is simply that cost and value of service are not generally the determinants of the level of export rates. Such rates are in general determined by the exigencies of competition among the carriers that serve the different ports and the different areas that produce a given commodity. Where such competition exists, as it frequently does, export rates tend to fall to the level of those charged by the carrier that serves the most favorably located producing area or the most favorably located port (R., 183). The corresponding local rates are frequently not subject to a like influence, and, as a result, may be above, below, or equal to, the local rates to which they correspond. There is thus no invariable relationship between shipside and domestic rates on commodities generally; the relationship is always peculiar to the particular case. If the through billing, the longer free storage, and the deliveries at shipside mean extra costs for the carriers and additional value for the exporters of cotton, it can certainly not concern them that exporters of other commodities, not sold in competition with cotton, pay shipside rates that bear a differential relationship to the corresponding local rates that is variant from the shipside domestic differential in issue here;

for such inter-commodity rate relationships can obviously not amount to unjust discrimination as between groups of shippers who sell a single commodity only. With such a question such relationships have nothing to do.

The foregoing are the only reasons that the commission gives to justify a disregard of service cost and service value as between the appellants and the interior merchants. They are not, it is believed, sufficient in law; and since the commission laid in its findings no basis for an equalization resting on service cost and service value, its order for equal rates seems to be without warrant as a matter of law.

Counsel for the commission in the court below seemed to have some apprehension that this might be true, for in his argument there he strove to find some other reason to justify the action that the commission took. He seemed to feel some apprehension about the commission's statement that

> "* * * the Galveston interests show that the average detention of cars containing export shipments is little, if any, greater at that port than the average detention of cars containing domestic shipments."

For he argued that

> "* * * even if the car detention on export traffic were substantially greater than the car detention on domestic traffic that would not be a sound reason for fixing the export rates higher than the domestic rates for the reason, as often pointed out by the commission, that demurrage charges are, in part, compensation to the carrier for detention of its equipment, and, in part, a penalty fixed to assure the prompt release of the car. If the penalty were included in the rate, each individual shipper would have to pay the penalty instead of only the shippers who detain the cars."

But the threads of logic in the foregoing argument are badly tangled. Demurrage, in both its penal and its compensatory aspect, is assessed for car detentions that exceed the absolute and average free periods allowed under a particular service. The appellants have never urged that any part of the demur-

rage collectible upon export shipments be assessed against export shippers generally rather than against those individual shippers that are guilty of such excess detentions. They do, however, insist that the car detentions, both experienced and possible, within the absolute and average free periods of a particular service are proper for consideration by the carriers in fixing the rates for that service. They are aware that the commission has often described demurrage charges as

> "* * * in part compensation to the carriers for the use of their equipment beyond such reasonable time as may be necessary to remove the traffic and in part a penalty for the failure of the shipper to act promptly in that direction" (*Export Freight Free Time*, 47 I. C. C. 162, 179),

but they are unaware of the commission's ever having said that that is any reason why the carriers are not to be compensated in the transportation rates themselves for the car detentions that do not exceed the "reasonable time * * * necessary to remove the traffic" in the particular service. The commission certainly did not say so in the present case.

Counsel for the commission also argued in the court below that no higher charge for the export rates was warranted by reason of the extra costs of the through billing and the long free time of the export service in view of the fact that cotton moving to the ports under through bills is interior-concentrated cotton. The commission's finding as to the transportational benefits of interior concentration were alluded to, as was also the testimony of certain witnesses (Pecot, R., 620; O'Donnell, R., 851), and the inference was suggested that the commission had based its equalization order upon the evidence of these witnesses and the view that it took of the benefits to carriers arising from interior concentration.

Now the actual fact is that the only finding the commission made was a finding that the transportational benefits of interior concentration were sufficient to justify the carriers in giving the privilege of transit concentration without charge at interior points, and it placed no reliance on these benefits in reaching its decision to equalize rates. It obviously could

not have relied upon them in that connection for the reason, as pointed out in the testimony upon which counsel for the commission relied (R., 853), that exactly the same benefits arise from interior concentration under local rates as arise therefrom under export rates, and if those benefits warranted lower rates for the export service in which the through billing and longer free time are given, they would warrant still lower rates for the local service from which those elements are absent.

Counsel for the commission sought also to deny the value to shippers of the through billing service and the long free time allowed at the ports on export shipments. He argued that the greater liberality of the export storage privileges was no benefit to shippers

> "* * * because, it is the result of an arrangement between the rail and ocean carriers, which arrangement has been perfected after long and careful study of the situation so that the ship owners or agents will be protected in the proper allocation of steamers. * * *"

And presumably in support of this argument he pointed out

> "* * * whatever demurrage accrues at the Texas ports on traffic moving on through export bills of lading is paid by the steamship company and not by the shippers * * *",

and that

> "* * * the carriers will not issue through export bills of lading except in connection with the steamship lines or ships whose agents have filed agreements to pay demurrage charges."

It is hard to see how these facts are relevant.

In cases of joint through service by connecting rail carriers, the burden of storage at connecting points is, it is true, usually borne by the succeeding carrier (*In the Matter of Bills of Lading*, 52 I. C. C. 671, 735); but even in such cases that is only a division of burden between the carriers themselves. The storage remains one of the elements comprising

the through service, and that is the value for which the shipper pays.

> "A through [export] bill of lading is not a joint undertaking for the through carriage of property from an interior point in this country to a foreign port. It is merely an instrument combining for the convenience of the shipper the separate and several contracts of the rail carrier to the American port and of the ocean carrier beyond." *New York Produce Exchange* v. *Baltimore & Ohio Railroad Company*, 46 I. C. C. 666, 670.

See also section 25 (5) of the Interstate Commerce Act.

> "Generally speaking the trans-Atlantic lines have no piers of their own where export shipments can be stored, and the burden of holding them falls upon the rail lines. The rail lines have no means of compelling the ocean carriers to accept the shipments, nor can they require them to bear the storage charges or to carry them as advances to be collected from the ultimate consignee in the foreign country." *New York Produce Exchange* v. *Baltimore & Ohio Railroad Company, supra.*

The commission has held that demurrage charges at the ports upon through export movements may be assessed back against the original consignor (*ibid.*, and also *In the Matter of Bills of Lading, supra,* 735); for

> "As a matter of law, neither the rail nor the ocean carrier is liable for storage charges at the port." *New York Produce Exchange* v. *Baltimore & Ohio Railroad Company, supra.*

Such an arrangement, however, is unsatisfactory to all concerned, and hence the agreements and the rule to which counsel for the commission referred in his brief below.

To induce such agreements by the ocean carriers the storage, average and demurrage provisions of the railroads' export service have had to be liberal enough to convince the ocean carriers that their demurrage burden would not be heavy. The liberality of these provisions of course results in a reversal of the burden of storage as it exists in cases of through ser-

vice exclusively by rail, for the preceding, rather than the succeeding, carrier bears the major part of the burden; but the storage is none the less one of the values that go to make the through overseas service. The railroads supply it as a part of their contribution to that service, and they are beyond question entitled to be paid therefor.

Counsel for the commission sought also to belittle the value of the through export service itself. He asserted that the only benefit arising therefrom is a "slight saving of interest" and that that is a "commercial matter * * * having nothing to do with transportation". He intimated also that the through service was shown to be without value any way by the fact "that only 10 or 12 per cent. of the cotton transported to the gulf ports moves under through export bills."

But 10 or 12 per cent. is really a large, and not a small, percentage. It must be remembered that not all the cotton that moves to the gulf ports is ultimately exported, and it must be remembered also that the bulk of what is exported is port-concentrated cotton, most of which admittedly moves to the ports under local rates. Moreover, a considerable number of interior exporters stop their cotton at port facilities for high-density compression, and not a few of these have been accustomed to move their cotton to the port warehouses under local rates leaving it to the port warehouses to make the deliveries to the ocean vessels. Also, there are still some foregn buyers too ignorant to be willing to accept drafts accompanied only by an American railroad's through export bill, and interior exporters dealing with such buyers are sometimes compelled to forgo the benefit of the railroads' through export service (R., 192-193). In the circumstances, the movement of 10 or 12 per cent. of the cotton on the through bills is a very definite indication that the bills are of real value to interior shippers.

It is, moreover, quite inaccurate to say that their value lies in their enabling interior shippers to make a "slight saving of interest". It is, in fact, hardly accurate to say that interest is saved at all; for the value of the through bills lies in

the fact that they enable interior shippers to discount drafts on their foreign buyers at an earlier date than they otherwise could do, and when a draft is discounted, interest obviously is paid by the discounter in the amount of the discount. The shipper gains, not by saving interest, but by obtaining sooner the funds that will enable him to engage in other buying and selling transactions. The shipper gets through the through export bills the opportunity of increasing the volume of his business and so of realizing profits from transactions not otherwise possible on a given capital. The value of the through bills is very real; it exceeds by far the saving of a few days' interest.

Such have been the after-thoughts of the commission's counsel. It is submitted that they lend nothing of validity to the commission's action in ordering equal rates for the appellants and the interior merchants without any finding at all on the comparative value of the services they receive and a belittlement only of the difference in the costs thereof. That the commission took the attitude it did in relation to these matters is of course in no way surprising, for there is no evidence in the record upon which a finding of equality in cost and value could possibly be based. No one denied the extra services; no one denied their value; and no one denied that there was *some* extra cost. If there was any extra cost at all, the carriers were warranted in charging *something more* than the local rates if they so desired, and this was especially so when added value was so very clear. It follows that the order for equal rates as between the appellants and the interior merchants is without warrant of law or fact and should have been enjoined.

(d) *There is no evidence to support the commission's findings of undue preference and undue prejudice as between the appellants and the interior merchants.*

The burden of proof of illegality is on those asserting illegality, *United States* v. *Illinois Central Railroad Company, supra.* The existence of additional elements of service

can not be, and is not, denied. What evidence there is to show that these elements were not worth the 3-cent difference asked is something the appellants can not quite see. There were statements of opinion even from adverse witnesses that 3 cents was not too much (West, R., 190-191; Edwards, R., 585; Witherow, R., 168), and there is the inescapable fact that interior shippers continued to buy the added elements at the 3-cent price although they could have gotten everything else they wanted under local rates and although they could, if they had wished, have secured storage facilities at the ports other than the carrier's cars and could, if they had wished, have made other arrangements for forwarding their shipments to the ocean vessels. It would not have been necessary for them to establish branches or purchase warehouses. There are public warehouses and forwarding agencies at every port. The interior merchants nevertheless chose to pay the higher rates. If the extra elements of that service were not worth the difference in price, why did they pay it? Why did they not take the alternative that exists? The inference is inescapable that the extra elements of the export service were worth to these merchants what the carriers asked. And there is no evidence in the record to show that that is not so.

II.

Even if the commission's finding of undue prejudice and undue preference were valid, and even if an equalization of rates were warranted, the commission would still be without jurisdiction to raise the rates paid by the appellants in the absence of a valid finding after full hearing that such rates were unjustly and unreasonably low and a valid finding after full hearing that the new rates by which they were to be replaced would be just and reasonable.

The considerations set forth in the first section of this brief are, it is believed sufficient to dispose of the present case so far as the equalization order is concerned; but even if the commission's finding of undue prejudice and undue preference were valid, the appellants urge that the equalization order would none the less be bad.

The Interstate Commerce Act sets up a system of limited regulation of public carriers. It is framed in pursuance of the philosophy that governmental interference with private enterprise should be kept at that minimum that is necessary to protect the public interest. The public interest, as Congress has conceived it, finds its expression in the statute in those sections which impose certain specific legal duties upon the carriers. Except in so far as such specific duties exist, the private enterprise and initiative of the carriers is unquestionably free.

With respect to the power of making rates there can be no doubt that the initiative belongs to the carrier. In *United States* v. *Illinois Central Railroad Company, supra,* a case decided nearly four years after the adoption of the statute in its present form, this Court flatly declared (R., 522) the law to be that

> "A carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate-making as to it seems wise."

The power of the commission to interfere with individual rates (as distinct from its power over the general rate level) is still limited to those cases in which after full hearing it has found that the rates in question fall within some one of the categories of illegality that the statute sets up. *United States* v. *Louisville & Nashville Railroad Company,* 227 U. S. 88, 92; *Interstate Commerce Commission* v. *Northern Pacific Railway Company,* 216 U. S. 538, 544. It is not enough that the new rates fixed by the commission do not themselves fall within any of the established categories of illegality. They may lie within the zone of reasonableness, give some remuneration above operating costs, and clear confiscation; but that is not enough for their validation. *Southern Pacific Company* v. *Interstate Commerce Commission,* 219 U. S. 433, 442. For that, it must appear that the rates that were in some way broke the law. *Interstate Commerce Commission* v. *Louisville & Nashville Railway Company, supra.*

So much is the inevitable result of the wording of section 15 (1) of the statute, in which the commission's grant of power is contained. That section, however, is not wholly free from ambiguity, and it is by reason of the ambiguity that exists that the present point is being urged upon the court.

Section 15 (1) reads as follows:

> "Whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice

whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

It is obvious that this section provides expressly for two conditions precedent to the powers that it grants to the commission:

(1) a full hearing upon a complaint or under an order;

(2) a determination that there is a violation of the statute.

And it is equally obvious that the grant that is dependent upon these conditions includes the following specific powers:

(1) determining and prescribing just and reasonable rates, fares, and charges;

(2) determining and prescribing maximum or minimum, and maximum and minimum, rates, fares, and charges;

(3) determining and prescribing just, fair, and reasonable classifications, regulations, and practices;

(4) issuing orders to carriers to cease and desist from violations found to exist or to be about to exist;

(5) issuing order to constrain the carriers for the future to obedience to prescriptions under (1), (2), and (3) above.

Now, if the language of the statute were taken literally, the commission would have jurisdiction to exercise all of these five different powers in every case in which it found any violation of the statute whatsoever. It could, for example, prescribe just and reasonable rates in a case involving the lawfulness of a regulation or a practice only—*e. g.*, a practice of making allowances. But such a result seems wanting in logic, and it is apparent at once that the occurrence of the two conditions precedent that the statute sets cannot possibly be construed to make available in every case all of the powers that the statute lists. Only those can be deemed available that are appropriate and necessary to remedy the particular illegality that the commission finds. This limitation is stated expressly in the case of the power to issue "cease-and-desist" orders, and it is submitted that it must be read into the prescriptive and constraining powers as well. In every case, it would seem, the question is what powers are necessary and appropriate for the purposes of remedy, and the first step toward an answer to that question will always be a clear discernment of the nature of the illegality that is found.

In the present case the finding of illegality is simply that the differential between local and export rates results in undue prejudice to interior exporters and to the so-called "uptown" port exporters by reason of the fact, also found, that the differential gives an undue preference to the appellants. There is no other finding. The commission distinctly states in both of its reports that the reasonableness of the two sets of rates was not in issue (R., 44, 49, 65).

Now, it is too well settled to admit of argument that "undue prejudice and preference", or "unjust discrimination", is

a category of illegality wholly separate and distinct from that of "unjustness and unreasonableness". As this court said at page 524 of its opinion in *United States* v. *Illinois Central Railroad Company, supra:*

> " * * * the mere fact that * * * [a] rate is inherently reasonable, and that the rate from competing points is not shown to be unreasonably low, does not establish that the discrimination is just. Both rates may lie within the zone of reasonableness and yet result in undue prejudice."

See, also, *American Express Company* v. *Caldwell,* 244 U. S. 617, 624; *Interstate Commerce Commission* v. *Baltimore & Ohio Railroad Company,* 145 U. S. 263, 277.

"Justness and reasonableness" has come to be understood as relating to the amount of a single rate, taken as a whole and in relation to other rates generally. "Undue prejudice and preference", or "unjust discrimination", relates, on the other hand, to the differential relationships between particular rates. The greater complexity of the former concept has led to the recognition that there is "a zone of reasonableness—a flexible limit of judgment that belongs to the power of fixing rates"; and since the absence of "unjust discrimination" is generally deemed to depend upon a differential in rates that accurately reflects the difference in cost or value of the respective services for which the particular rates are charged, it often happens that rates which, standing by themselves (or, more accurately, in relation to rates in general), would escape condemnation nevertheless are held to work as between the shippers respectively paying them "undue prejudice" or "undue preference" within the meaning of section 3. The differential relationship that will escape condemnation under that section is deemed to be a constant, invariant whether the rates be above, or below, or at, the level that is deemed to be "just and reasonable" within the meaning of section 1. Thus, in the *Illinois Central* case, cited *supra,* it was pointed out at page 521 of the opinion that the discrimination therein existing could be removed

or by raising the rate from Fernwood,

"* * * either by making the Knoxo rate as low as that from Fernwood, or by giving both an intermediate rate."

With the nature of "undue prejudice and preference", or "unjust discrimination", clearly in mind, it is not hard to see which of the five powers given by section 15 (1) is appropriate to its remedy. The power that is appropriate is the power of making an order to "cease, and desist" from practicing, the "unjust discrimination" that has been found to exist. It was, in effect, an exercise of that power that this court approved in the *Illinois Central* case, *supra*, for the alternative order therein entered covered all possible alternative modes of removing the discrimination and left the carrier free to choose which it preferred to adopt. In the present case the commission has done something quite different. It has undertaken to command that the discrimination it has found shall be removed by increasing the level of the local rates by 1 cent and by lowering the export rates, exclusive of wharfage, to the level of the new local rates so fixed. That, the appellants submit, the commission had no jurisdiction to do on the basis of the hearing held and findings made in the present case. They submit that the power to prescribe rates is so inappropriate to a proceeding, strictly and solely under section 3 that it must be deemed not to be given under the terms of the statute. It is inappropriate to such a proceeding because it is unnecessary for the remedy of the only type of illegality that can possibly be found; because if rates can be fixed without a hearing and determination upon the question of reasonableness, they may turn out to be unlawful under section 1; because the right of choice among the alternative modes of removing an unjust discrimination belongs to the carrier; and because the right that the carrier shall be allowed that choice belongs, by consequence, to the shipper.

That the power of fixing rates is unnecessary in section 3 proceedings is shown by the fact that unjust discriminations have regularly been remedied in the past without its

use. *St. Louis Southwestern Railway Company* v. *United States*, 245 U. S. 136; *United States* v. *Illinois Central Railroad Company, supra;* and *cf. Great Northern Railway Company* v. *Minnesota*, 238 U. S. 340. The last case, though dealing with the order of state commission, is especially noteworthy in its application of the criterion of what is necessary to cure the illegality found. See especially page 346 of the opinion.

It was argued, however, in the court below that "from the beginning" the commission has interpreted section 15 (1) as giving it the power to prescribe specific rates as a means of removing undue prejudice. Two of the commission's reports were cited. *Arkansas Jobbers Association* v. *Director General*, 59 I. C. C. 662, 669; *Ridenour-Baker Mercantile Company* v. *A. T. & S. F. R. R. Co.*, 113 I. C. C. 629, 634. In the first case, reasonableness was an issue; in the second there is only a dictum, the power claimed was not exercised. Certain cases from this court were also cited: *American Express Company* v. *Caldwell*, 244 U. S. 617; *H. E. & W. T. Railway Company* v. *United States*, 234 U. S. 342; *Wisconsin R. R. Commmission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563; *New York* v. *United States*, 257 U. S. 591; *United States* v. *Merchants Association*, 242 U. S. 178. The last of the above cited cases dealt only with a revocation of a permission previously granted by the commission under the "long-and-short-haul" clause. That is hardly in point. The others are cases arising under section 13 (4) which specifically requires the commission to fix rates to remove discriminations in cases in which an intrastate rate is one of those concerned. That would seem to be a sufficient distinction; but counsel for the commission argued below that the power must exist in the present case *a fortiori* since

> "Under section 13 (4) one of the related rates is intrastate in character and over it the commission has no jurisdiction *per se.*"

But the conflict of jurisdiction is doubtless the very thing that is at the bottom of the difference in the statutory provisions as to the commission's power, for where the carrier's choice is subject to the constraining power of a state it is desirable that it be able to justify departures from state orders by reference to specific orders from the federal commission.

Various other arguments were advanced in the court below in attempted refutation of the position that the appellants take. It was argued that it would be immaterial that the rates set might be in violation of section 1 since the shipper could file a complaint on the basis of their unjustness and unreasonableness. But if this were true, it would hardly be a desirable thing procedurally that success under section 3 could breed another proceeding under section 1. If the commission intends to fix rates, the interests of all parties will be served by requiring it to order an investigation into the question of reasonableness in order that it may determine accurately and definitely that the rates it fixes are not unlawful.

The assertion was also made by counsel for the commission that

> "while * * * the reasonableness of the rates *per se* was not in issue before the commission * * *, the *relative* reasonableness of the rates was in issue";

and "relative reasonableness" was defined by him as the "reasonableness of the shipside rates in their relation to the city-delivery rates". This apparently was the position of the court below which held (R., 140):

> "The court is convinced that while under Sec. 3 under which this proceeding was taken, it was competent for the Commission to not only forbid the discrimination, if there was one, but to fix a rate which it found to be just, fair and reasonable which would do away with the practice condemned, it is essential to the fixing of such a rate that a hearing be had and a finding made upon its reasonableness.
>
> The full court is, however, of the opinion that a fair construction of the words 'just and reasonable' as used

in the context above quoted, permits the conclusion that in a discrimination case under Sec. 3 such as this is, it is only necessary that the rate fixed upon to remove the discrimination be found to be just and reasonable for that purpose, and that it is not necessary that it be found just and reasonable per se."

"Justness and reasonableness for the purpose of removing discrimination" seems indistinguishable from "relative reasonableness" as defined by counsel for the commission; and it would seem that any pair of rates, whatever their level as a pair, that bore to each other the prescribed differential relationship (in this case, parity) would be "just and reasonable" in this sense. It seems therefore rather clear that this new variety of "justness and reasonableness", which is quite unknown to the statute, is nothing at all but "absence of unjust discrimination" by another name. These words will not disguise the fact that the commission in the present case selected a *particular* level for the supposedly non-discriminatory rates for which its order called. That was unnecessary, since a pair of equal rates at any level would equally well have cured the discrimination that it thought existed.

Finally, it was argued that there could at least be no objection to the fixing of the rates at a particular level in the present case for the reason that in *Galveston Commercial Association* v. *Alabama & Vicksburg Railway Company*, 77 I. C. C. 388 (Docket No. 11965), both rates had been fixed as reasonable rates, and that any rate between them must therefore also be reasonable since it must necessarily fall within the zone of reasonableness recognized in the decisions of this court. One difficulty with that argument is that the old local rates were fixed by the commission in the proceeding cited as maximum reasonable rates. By reference to the report therein, the court will find that the export rates, including wharfage, to the Texas ports from Oklahoma points were approved as just and reasonable, and it was held that the local rates from such points to the Texas ports would be unjust and unreasonable if they were in excess of a level five cents below

the export rates. The local rates to the Texas ports from Arkansas and Louisiana points were similarly fixed, and a finding made that local rates in excess of the levels fixed would be unjust and unreasonable. *I. & S. Docket 1858,* 85 I. C. C. 5, 14, should also be consulted in determining the status of local rates to the Texas ports from Louisiana points. In the light of these facts the argument based on the doctrine of a zone of reasonabless falls to the ground.

The argument also completely misconceives the nature of the doctrine of the zone of reasonableness. The zone of reasonableness is not a zone in which the commission's wishes supersede the private enterprise and free choice of the carrier; it is a margin of tolerable error allowed to those persons whose task it is to fix railroad rates, whether those persons be railroad managers or interstate commerce commissioners. The doctrine of the zone of reasonableness can in no way justify what the commission did; for even if both the rates herein concerned are to be taken as reasonable rates for both types of service, and even if the necessary consequence of that fact is that all intermediate rates are also reasonable for both services, it still remains true that if any equalization be proper, it is for the carriers to choose the point at which it shall take place, subject, of course, to the limitation that the level chosen must be just and reasonable and otherwise lawful. If the carriers had never broken the law by charging unjustly discriminatory rates, as it is assumed for the sake of argument they have, the right of choice as to the rate level would indubitably be theirs, always within the limitations that the law prescribes. *United States* v. *Louisville & Nashville Railway Company, supra,* 92; *United States* v. *Illinois Railroad Company, supra,* 522. A breach of the law does not narrow the scope of such managerial liberty; there is no such penalty. The only consequence that the law contemplates is an administrative remedy for the breach committed; the commission is wholly without jurisdiction to do more than cure the illegality that it finds. A prescription of specific rates on the basis of a

section 3 finding alone unquestionably does do more; it enforces upon the carrier a particular rate policy and that certainly is not required to remove a discrimination in rates. The commission should remember that.

> "A carrier is entitled * * * to adopt such policy of ratemaking as to it seems wise." *United States* v. *Illinois Central Railroad Company, supra;*

and an interference with that right that is in no way necessary to the ending of a breach of the law is arbitrary and beyond the scope of the commission's power.

III.

The commission's prohibition of allowances to the appellants for substituted transportation from their warehouse to the adjacent wharves is arbitrary and in violation of law, and should be enjoined.

In the statement of facts it was mentioned that the appellants and many of the other port merchants are accustomed to make their own deliveries from the port warehouses to shipside. Only a few of the port shippers use the carriers' service. These few are those who use the warehouses that are furthest away from the wharves.

The commission's decision on the question of allowances relates to allowances to be made to the port shippers under the equalized rates for the making of such deliveries to shipside. The commission held (R., 68) that allowances might be made (1) to the so-called "uptown"* shippers in all cases in which they made their own deliveries to the wharves, and

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*The commission used the word "uptown" to designate any warehouse not in the neighborhood of a wharf whether on the waterfront or not; and it used the word "waterfront" to designate only those warehouses on the waterfront which were near a wharf.

(2) to the appellants in those cases in which they delivered shipments to wharves other than those adjacent to their warehouses; but it said that

> " • • • upon cotton delivered to shipside from and by water-front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the waterfront facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intra-plant movement just the same as the handling of cotton from the interior or an uptown warehouse to the railroad car or dray is an intra-plant movement."

It then added:

> "No allowances may lawfully be made for these intra-plant movements."

This prohibition of course covers the great bulk of the appellants' shipments. They submit that its necessary effect is to subject them to undue prejudice and to accord to their "uptown" port competitors an undue preference within the meaning of the law; that, in consequence, it is in excess of the powers of the commission; and that its enforcement should, accordingly, be enjoined.

It cannot be denied that there is a differential in service between the shipments of the appellants under local rates and those of the "uptown" merchants under export rates that consists of an extra port delivery—*i.e.*, the delivery to shipside with the extra costs that it necessarily entails. (See *supra*, p. 23.) The inevitable effect of equalization is, then, that the appellants and their "uptown" competitors pay equal rates for unequal services; but the inevitable effect of the commission's position in respect to allowances, when added to equalization, is that the appellants and their "uptown" competitors pay unequal rates for equal services. For when the "uptown" shipper makes his own delivery to shipside, he

cuts his service demand down to parity with the service demand of the appellant; he declines to ask the port transit stop, or second delivery, that constitutes the excess of service on his export shipments. The services sought and received by the appellants and such a merchant are then indistinguishable; yet the appellants will then pay a higher rate—higher by the amount of the allowance that they do not get.

There is no possibility of asserting that the services in the case supposed are unequal except under a complete misconception of the whole situation. There are times in the reports when the commission seems to think of the appellants' warehouses as *at* shipside and of the warehouses of their "uptown" competitors as mere way stations *en route* thereto. Physically, that is untrue. Inspection of the terminal maps of the ports will show that the various "uptown" warehouses are scattered all over the city switching areas. Physically, some are in "back-haul" positions, and the positions of others are physically "out-of-line". Some so-called "uptown" warehouses are just as much on the waterfront as those of the appellants. There are no doubt some that are physically *en route;* but that certainly is not the physical position of the "uptown" warehouses, as a group, in relation to shipside or the warehouses of the appellants. And when it comes down to the law, the only aspect of the physical situation that is really important anyway is the fact that *all* the port warehouses are within the city switching areas. It must be remembered that the same rate should apply *for the same or equal services* to all shippers on the same road within the switching limits of a single municipality.

The appellants again insist that naturally their position is more favorable than that of their "uptown" competitors, for their proximity to the ocean carriers makes it unnecessary for them to ask the port transit stop, or second delivery to shipside; or, what is equally a natural advantage, their proximity enables them to make their own deliveries more cheaply than their "uptown" competitors. They therefore submit that it is bad enough to lose the advantage in rates

which should naturally be theirs, but that it is past all conscience to be subjected to a positive disadvantage when their "uptown" competitors choose to buy only the same services as they. They submit that that result is "*unjust* discrimination" in the fullest sense of the term.

It should be observed that that result would still follow even if they were to receive allowances unless the allowances received were as large as those paid their "uptown" competitors. The only system of making allowances under the equalized rates that would avoid such unjust discrimination toward the appellants would be that of granting flat allowances of a specified sum to all shippers whatever their location within the city switching area. There is much that might be said for that solution; for the major part of the service that the carriers render in making the second delivery to shipside is that of the car detention at the concentrating warehouse during the loading with merchandised cotton, the actual switching-out from the warehouse siding, the actual switching-in to the siding at the pier, and the car detention there while unloading takes place. The actual intra-city linear haul from warehouse to shipside is by comparison a trifle. Nevertheless, the appellants recognize that a system of flat allowances might not be deemed "just and reasonable" under paragraph (13) of section 15 of the statute. They therefore argued in the alternative before the commission that allowances should either be abolished or given to all. They recognize that the abolition of allowances would put a serious strain on the carriers' equipment at the peak of the cotton movement, for they could then no longer resort to allowances to procure the early release of their cars by port exporters; but that fact does not make proper the discrimination against the appellants that the commission's allowance order produces or that any allowance order not providing for a flat system will necessarily produce. Rather, it indicates that the order for equalization is itself fundamentally wrong.

But that does not end the vice of the commission's order, for even if allowances be proper in the present case, the appel-

lants are nevertheless still entitled to receive something for the substituted services on the cotton they deliver to the piers adjacent to their plants. The commission's reasons for its prohibition of allowances in such cases is contained in a single sentence (R., 68):

> "The hand or electric trucking, or movement by overhead trolley, from the part of the waterfront facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior or an uptown warehouse to the railroad car or dray is an intraplant movement."

The commission says that the movement effected by appellants "is not a substitute for rail transportation." Whether it is or is not is certainly the crucial question. *United States* v. *Baltimore & Ohio Railroad Company,* 231 U. S. 274. And as pointed out by this court in the case just cited, that is to be determined by whether or not the railroad was obligated under its tariffs to perform the service that the recipient of the allowance has performed for himself. If it was so obligated, there is no escaping the conclusion that the service performed is "a substitute for rail transportation."

Just how it can be denied in the instant case that under the equalized rates the carriers are obligated to move appellants' export shipments from their warehouses to the berth of the vessel destined to receive them is something the appellants do not understand; for that is the obligation specifically undertaken in the tariffs. If the appellants called for that service, just how the carriers could refuse it is not easy to see. They could certainly not assert that a delivery at shipside had been made, for that would be neither actually nor legally so. If it were, the appellants could not call upon the carriers for movements from their warehouses to piers not adjacent to their warehouses, and they could, in consequence, receive no allowances in case they themselves made deliveries there; yet the commission says that upon such deliveries

the appellants may receive allowances. What excuse other than this could possibly be offered? The carriers surely would have to perform if performance were asked.

And performance would entail exactly the same labor of switching-in and switching-out as if the appellants' warehouses were remote from the wharves. The detention of equipment would be the same. The only difference would be in the length of the intra-city linear haul. The length of that haul would unquestionably be the least important element in the service costs entailed. The fact that it would be very brief is admitted, but that alone is no basis for a prohibition of an allowance that is proper in amount. In *Louisiana & P. Ry. Co.* v. *United States*, 209 Fed. 256, the commission had forbidden allowances to mills located within 1000 feet of a carrier's lines. In enjoining enforcement of the order, the court said:

> "As we have already stated, the possibility, particularly in the case of short switches, of an abuse or illegal use by a railroad of the right granted to it by statute to make an allowance for services connected with transportation which, in its discretion, it permits the shipper to perform, does not vest the Commission with power absolutely to forbid its exercise as an unjust discrimination. It may cut down the compensation if it be too high; it may enforce any reasonable regulations to prevent unjust discrimination, but it may not forbid such payments as unlawful because the service is relatively either small or great."

There can be no doubt that the appellants are entitled to receive something; and in view of the fact that the major service elements would be the same if appellants called for performance, the sum ought certainly to be substantial.

The commission says that the movement "from the part of the waterfront facility known as the warehouse or compress to that part known as the wharf * * * is an intraplant movement." The implication seems to be that the appellants' warehouses and the adjacent wharves are in each case one indivisible plant. That certainly is not true in the case

of the warehouse of the Turning Basin Compress Company, for the wharf adjacent to it is not even the property of that company; it belongs, instead, to the City of Houston. The ownership of the warehouses and adjoining wharves, it is true, is common in the case of the Houston Compress Company and the case of the Ship Channel Compress Company, but the two types of facility are no more a single plant in either case than any other dissimilar enterprises in common ownership. The warehouses are a part of the equipment of the appellant cotton merchants for engaging in the cotton trade; the wharves do a general wharf and dock business and while more cotton passes over them than any other commodity, other commodities are received, notably coffee and sugar. It would, moreover, not be material even if they were one plant, for even a movement within a single plant may be a "substitute for rail transportation" in the sense requisite to validate an allowance. *United States* v. *Diffenbaugh, supra.* The grain elevation therein concerned occurred wholly within the plant of the shipper.

The commission says that the movement that the appellants effect is "just the same as the handling of the cotton from the interior or an uptown warehouse to the railroad car or dray." It mentions that the method of movement is by "hand or electric trucking or * * * overhead trolley;" but it can hardly have meant to say that the mode of movement is important. What it very probably did mean to say was that the labor involved for the appellants was no different and no greater than they would have to perform in any event in merchandizing their cotton; but even if this were a fact, as it is not, it would be quite irrelevant. This court has already held that it is immaterial that a shipper gains an advantage of lessened cost in his merchandising processes by performing them simultaneously with services for which he receives allowances from a carrier. The *Diffenbaugh* case is again in point.

The fact is there is not a single reason to support the commission's prohibition of allowances to the appellants for movements from their warehouses to the adjoining wharves, and

the enforcement of that prohibition should therefore certainly have been enjoined by the court below.

That court seems, indeed, to have recognized the justice of the appellants' complaint in reference to the commission's position on allowances; but it nevertheless refused an injunction on the ground (R., 138)

> "* * * that it is time enough for a shipper to complain of an allowance or disallowance when there has been an order on it";

and (R., 139)

> "* * * that whatever the order of the Commission ought to be in a specific instance upon a specific claim or allowance, or disallowance, or whatever relief might be obtained against such orders, the report of the Commission is so delivered and the order on it so entered that there is no matter now presented for injunctive relief."

It then cited *Proctor & Gamble* v. *United States,* 225 U. S. 282, and certain other cases in which injunctive relief against orders of the Interstate Commerce Commission has been refused on the ground that the orders concerned were merely negative.

If the commission had done no more than refuse to direct the carriers to grant allowances, the case would unquestionably be within the "negative-order" doctrine. If the commission had merely declined to act, there would be nothing to enjoin. *Lehigh Valley Railroad Company* v. *United States,* 243 U. S. 412. There would in such a case be no real exercise of any of the powers that the commission has. *Manufacturers Railroad Company* v. *United States,* 246 U. S. 457. But the commission went further; it forbade allowances to the appellants for the shipside deliveries they make from their warehouses to adjacent wharves. It declared flatly (R., 68),

> "No allowances may lawfully be made for those intra-plant movements."

This "constrains the railroad companies to obedience unless annulled or suspended by judicial decree"; it is not a negative order within the doctrine of the decisions of this court. *United States* v. *Illinois Central Railroad Company*, 244 U. S. 82, 89; *Procter & Gamble* v. *United States*, 225 U. S. 282, 293.

It remains only to notice the contention that there is no order at all, either negative or affirmative. This argument is based not on the substance of the commission's decision but upon the mere wording of the formal order simultaneously entered. That formal order is reprinted in the record at pages 80-81. It will be observed by the court that allowances are not specifically mentioned in any part of the order, and that the ordering portions relate to "undue prejudice and preference *found* * * * *to exist*." The commission did not find that undue prejudice and preference *did* exist in relation to allowances, but it clearly indicated that it thought, it, or, or least, some other type of illegality, *would* exist if allowances were paid to the appellants for deliveries from their warehouses to the piers adjoining, and in its report it distinctly forbade the making of allowances for such deliveries. The court will also observe that the formal order simultaneously entered refers to the report (R., 80) in which the commission's prohibition is contained, and recites that the

> "* * * said report and the reports of and orders of February 2, 1923, and June 23, 1925, are hereby referred to and made a part hereof."

In view of this recital, it would seem that the prohibition in the report is indisputably a part of the formal order. The position of the court below seems over-technical. Counsel for appellants would feel themselves on very unstable grounds if they were obliged to rely upon such a technicality to defend a carrier guilty of disobedience to the prohibition that the report contains. They submit that such a technicality is no valid ground whatsoever for the decision below.

IV.

The whole aim of the commission was to equalize conditions among exporters of cotton.

The sole effect of its order in all its aspects was to deprive the appellants of the economic advantage of their superior location for engaging in cotton export.

The order exceeded the powers that an arm of the government can constitutionally exercise.

In the court below counsel for the commission argued that the action of that body in the present case had been "based squarely upon a comparison of the two types of service". The position of the appellants is (1) that it is a legal impossibility to base the action that was taken upon a comparison of the two services, (2) that, as a matter of actual fact, the commission did not even purport to do so, (3) that the whole aim of that body was to equalize conditions among exporters of cotton, and (4) that the sole effect of the commission's order in all its aspects was to deprive the appellants of the advantage of their superior location for engaging in the cotton export trade. The first of the above propositions has been discussed; the other ~~two~~ three will be treated in the remaining pages of this brief.

It must be borne in mind that the commission's order undertook to equalize rates for the two types of service. The commission was certainly aware that an order for equal rates could not stand except upon a finding, supported by evidence, that the costs to the carriers *and* the values to the shippers were equal in the services for which the rates were ordered. The commission knew the language used by this court in *United States* v. *Illinois Central Railroad Company,* 263 U. S. 515, 524:

> "* * * The difference in rates can not be held to be illegal unless it is shown that it is not justified by

> the cost of the respective services, by their values, or by other transportation conditions."

The language there used is plain; it is in the alternative; any one of the three—cost, value, or "other transportation condition",—is sufficient to *validate* a carrier's rate. Yet the commission only belittled the difference in cost and made no finding at all on value. The commission also knew that

> "To bring a difference in rates within the prohibition of section 3, *it must be shown that the discrimination practiced is unjust* when measured by the transportation standard." *United States* v. *Illinois Central Railroad Company, supra.*

Yet the commission spoke only of the lack of proof of legality:

> "The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates" (R., 47).

That is not the language of an equalization of rates that rests upon an application of the transportation standard.

And if the commission rested its decision "squarely on a comparison of the two types of service", why did it in the very next line grope for some further support, saying (R., 47):

> "Especially is this so, when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity?"

This is certainly a clear intimation of its opinion that the "transportation standard" in the case before it was somewhat less than controlling and not strictly to be regarded in reaching its result.

The appellants urged that an order for equalization in disregard of service cost and service value would be unlawful

and void under the decisions of this court, and the following cases were cited in support of that contention: *Interstate Commerce Commission* v. *Diffenbaugh, supra; Penn Refining Company* v. *Western New York & Pennsylvania Railroad Company,* 208 U. S. 208; *Baltimore & Ohio Railroad Company* v. *United States,* 231 U. S. 274. The commission replied that the rate adjustment before it was "somewhat unusual" and implied that the cases cited were therefore not relevant. It said (R., 48):

> "As contended by the waterfront facilities it is not our function arbitrarily to equalize rates in such manner as to deprive any industry of the legitimate advantage of its location. But we do not think that such a situation is presented. Rather the question before us is whether we shall permit this somewhat unusual adjustment of rates to be continued now that the conditions which previously justified it have changed, and it is shown that it gives to large and powerful interests an advantage over their competitors."

In the passage immediately following, the commission explained what it conceived to be "unusual" in the rate adjustment before it. It said:

> "Usually the same rate applies to all industries on the same road within the switching limits of a municipality, and shipside rates, if higher than the domestic rates, are only enough higher to cover the strict wharf or pier charges, such as handling, from car to shipside, and wharfage. The rates under consideration are not so made. Rather there is a difference of 3.5 cents in the rates not accounted for by the wharf or pier charges."

Here, if anywhere, one would have expected the commission to say that the differential in rates was *illegal,* not "unusual", because of incongruity with the comparative costs and comparative values of the two types of service; instead reasons were given in an effort to justify a disregard of cost and value in the particular case. The conclusion is inescapable that the commission knew that its decision could not

rest upon an even-handed application of the "transportation standard", and that it did not seek so to rest it.

Moreover, the commission doubled back on each of the reasons that it gave to justify its departure from the standard of decision that this court has set. It professed to be equalizing the rates for the local and export services (1) in order that one rate might apply to all industries on the same road within the switching limits of a single municipality and (2) in order that the local-export differential for cotton rates might be brought into line with what it asserted was the usual local-export differential for commodities generally; but before it finished, it had authorized and approved the payment of allowances to "uptown" merchants for making their own deliveries to the ships and had at the same time forbidden the payment of such allowances to appellants for deliveries made from their warehouses to adjacent wharves. Yet with the making of their own deliveries to the ships, the services demanded and received by the "uptown" merchants fall to undeniable parity with the services demanded and received by the appellants; in other words, the "uptown" merchants cease to ask the export service and ask only the local service. And by virtue of their receipt of an allowance that is forbidden to the appellants upon shipments to their warehouses that they themselves deliver to adjoining piers, the "uptown" merchants are able to get that local service at a rate that is less than that paid by the appellants by the amount of the allowance that the "uptown" merchants get. It is fair, therefore, to ask just what has become of the commission's ideal of a single rate for all industries on the same road within the switching limits of a single municipality. It is fair, also, to ask just what has become of its ideal of parity between local rates and export rates with wharfage excluded; for it is obvious that the receipt of the allowances also gives the "uptown" merchants a local rate that is lower than the interior shippers' export rate by an amount that is more than "enough * * * to cover the strict wharf or pier charges" at the port. And it would, in addition, be hardly unfair to

ask just where these ideals were on the two prior occasions upon which the commission gave the stamp of its approval to the differential that it has herein condemned. As Commissioner Hall said in his dissent (R., 51),

> "The only apparent change is the recent location of warehouses and compresses on the waterfront of Houston and Galveston. * * * If that location has some advantages, it does not follow that the carriers may be called upon to cure them by readjustment of rates. * * * Nothing that was said before is here unsaid. We simply forget it or ignore it. If we were right then, we can not be right now."

The commission talked of *free* first concentration in transit (R., 47); it insisted that first concentration in transit could be had without charge on local movements, as it can; and it implied that the carriers must therefore give it without charge on export movements even at the ports (R., 48). Yet before it finished, it fixed the equalized rates at a point 1 cent above the pre-existing level of the local rates in order

> "* * * to compensate [the carriers] for services rendered in handling from the uptown facilities to the water front the class of shipments nof [*i. e.*, formerly] delivered to such facilities at city delivery rates [and, of course, thereafter formerly delivered to shipside by the 'uptown' facilities themselves] * * *."

Apparently, there was no objection to a charge for first concentration at the ports so long as the appellants contributed toward its defrayment an amount sufficient to equalize them commercially with those of their competitors who alone asked that service.

It is no injustice to the commission to say it had no really consistent idea of what it was about except a vague notion that the three groups of cotton shippers ought somehow to be equalized in cost of reaching the ocean carriers. It seemed to conceive that its prior approvals of the differential it presently condemned could be justified by the fact that

there were, at the dates of those approvals, no warehouses at the ports that were located so advantageously for direct dealing with the ocean vessels as are those presently owned by the appellants; and it seemed to think that the appellants change of location could justify its condemnation of what it previously approved. It said (R., 59-60):

> "In Louisiana Cotton, 46 I. C. C. 451, and Galveston Commercial Asso. v. A. & V. Ry. Co., supra, we found in effect that ship-side rates on cotton to New Orleans and the Texas ports, exclusive of wharfage charges, should exceed the rates for deliveries at uptown warehouses or compresses by an amount sufficient to cover the average cost of handling the cotton from the uptown warehouses and compresses to ship-side. *At that time the important warehouses and compresses at the ports were all located back from the water front and the relationship there prescribed between the city-delivery and ship-side rates substantially equalized merchants at the ports who drew their cotton from the interior, merchandised it at the uptown facilities and then moved it to ship-side, with interior merchants who shipped their cotton direct to ship-side.* This relationship between the city-delivery and ship-side rates proved generally satisfactory until water-front facilities were erected first at Galveston and later at Houston. These new water-front facilities were and are within the switching limits of the respective cities and deliveries thereat were and are made by respondents at the city-delivery rates. *Merchants using these water-front facilities thus gained an advantage over merchants using interior or uptown facilities,* for they secured delivery of their cotton practically at ship-side at the lower city-delivery rates, whereas interior merchants shipping direct to ship-side were compelled to pay the higher ship-side rates, and merchants using the uptown facilities were compelled either to pay the ship-side rates if transit were availed of at the port or bear the cost of getting their cotton from such facilities to ship-side. Later, in order to compete with the water-front facilities, the uptown compresses were compelled to shrink their charges sufficiently to cover the cost of getting the cotton from their presses to the water-front. *Thus the conditions which*

gave birth to the existing relationship between the ship-side and city-delivery rates were disrupted, a realignment of interest was created and the present litigation precipitated." (Italics added.)

The commission's remark (R., 47) that

"* * * differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity * * *",

seems to indicate that it thought that some accretion of power would result to it by reason of such facts if true. It was right enough that the inter-gulfport export cotton rate relationships do not, and did not, reflect actual differences in service costs or service values, for those relationships are the result of competition amongst the carriers serving the different ports. But it is not easy to see how that fact could make a disregard of the transportation standard proper as between the various classes of cotton exporters herein concerned. Interior exporters, "uptown" port exporters, and "waterfront" port exporters are classes that cut quite across those based on the ports through which the exporters ship. An equalization of the several ports would equalize each interior exporter with every other interior exporter without discrimination based upon the port through which each might respectively ship, and it would have the same effect upon "uptown" port exporters and "waterfront" port exporters; but it would leave the rate relationships based on the cross-classifications exactly where they were before—lawful or unlawful as the case might be.

There remains the assertion that the transportation standard had been disregarded to keep the individual "industries" on a rate parity. It will be assumed that by "industries" cotton merchants were meant, for an equalization of other industries would certainly not be relevant. Now, the actual fact is that no such equalization was ever attempted. The differential herein concerned originated with the carriers (R., 331-332); and when they fixed the rates that estab-

lished it, they fixed them, not by a consideration of what would equalize shippers, but by ~~assuming~~ summing the local rates and the shipside switching charge to assure to themselves some compensation for the port concentration privilege when that should be claimed upon export movements (R., 331-332). The mode of the making clearly appears in *Louisiana Cotton*, 46 I. C. C. 451. It is true the carriers pointed out in that case that there could be no prejudice since all shippers were equalized *in the matter of rates*, as they undoubtedly were *when they all asked the full railroad service to shipside;* but the carriers never professed to have fixed the 3-cent differential to accomplish a commercial equalization among their shippers.

But the point need not be labored; for even if the carriers had departed from the transportation standard, that would give the commission no power to compel a continuation and extension of that departure. The carriers would not by virtue of that departure have abdicated their right to rates commensurate with the transportation standard whenever they should be ready to charge them. That was squarely decided by this court in *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433.

From that case it follows also that such temporary aberrations by carriers from the standard of service cost and service value in fixing rates in no way destroy the rights of shippers to have their advantages in location respected except in so far as impairments may result from the stresses of carrier competition. The power of the commission in proceedings under section 3 is the same in such cases as it is in others. The difference in rates may be condemned only if the difference is not justified by a difference in cost or value of the respective services and if a departure from that standard is not excused by some other transportational consideration. The power of the commission under section 3 is the same whatever the absolute level of the rates concerned. *United States* v. *Illinois Central Railroad Company, supra.*

In the present case, merchants who claim the port privilege on export movements assert that they suffer prejudice by reason of the fact that the appellants pay the lower local rates on movements from the producer to their port warehouses; but these so-called "uptown" merchants can also move cotton into their port warehouses under local rates if they so desire, and they can have the same interior concentration privilege upon such movements that is open to the appellants. Their complaint simmers down to this: they have to pay for the port concentration stop, or second port delivery, that they claim on export movements, whereas the appellants have no such expense on their export cotton. But the reason the appellants have no such expense is simply that they do not ask that extra service of the carriers, and they do not ask it because, by reason of their location in proximity to the ocean carriers, they do not need it. That is the essence of the locational advantage that they enjoy over their "uptown" port competitors: they ask one delivery at the port instead of two. The rate relationship in issue only reflected that difference in service demanded, and that difference, in turn, is their natural advantage.

It is apparent that much the same situation exists as between the appellants and their interior competitors. By reason of their interior locations remote from the ocean lines, the interior merchants can not deal directly with the ocean carriers. They need, in consequence, the services of through billing and delivery directly to the ocean lines, and they need, as well, storage at the point of connection between the railroads and the ocean vessels. These services they must have from the railroads or from some one else. The appellants, by reason of their location at a point from which they can deal directly with the ocean carriers, have no need to ask these services from the railroads or from any one else. That constitutes the advantage their location gives them. For such services, therefore, they were quite properly not required to pay under the tariffs that the commission displaced.

The appellants' ability to get along with the lesser services that they receive from the railroads is thus obviously and naturally related to their ownership of warehouses in proximity to the wharves. It follows that an equalization of rates in disregard of the lesser character of the services they demand deprives them of the element of locational advantage in the value of their properties. That deprivation is not justified by the public interest or by the self-interest of the carriers that serve them. It is a deprivation for the benefit of their competitors alone, and when accomplished by a governmental body is in plain violation of the Fifth Amendment to the Constitution of the United States.

Conclusion.

The court below erred both in its refusal to enjoin the commission's order for an equalization of rates and in its refusal to enjoin that prohibiting allowances to the appellants for substituted transportation from their warehouses to adjoining piers. The decision below should therefore be reversed and the case remanded to the court below with instructions to grant the relief prayed.

Respectfully submitted,

JOHN W. DAVIS,
R. C. FULBRIGHT,
Counsel for the Appellants.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19.

ALEXANDER SPRUNT & SON, INC., *et al.*,
Appellants,

against

THE UNITED STATES OF AMERICA, *et al.*,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

SUPPLEMENTAL BRIEF FOR THE APPELLANTS.

JOHN W. DAVIS,
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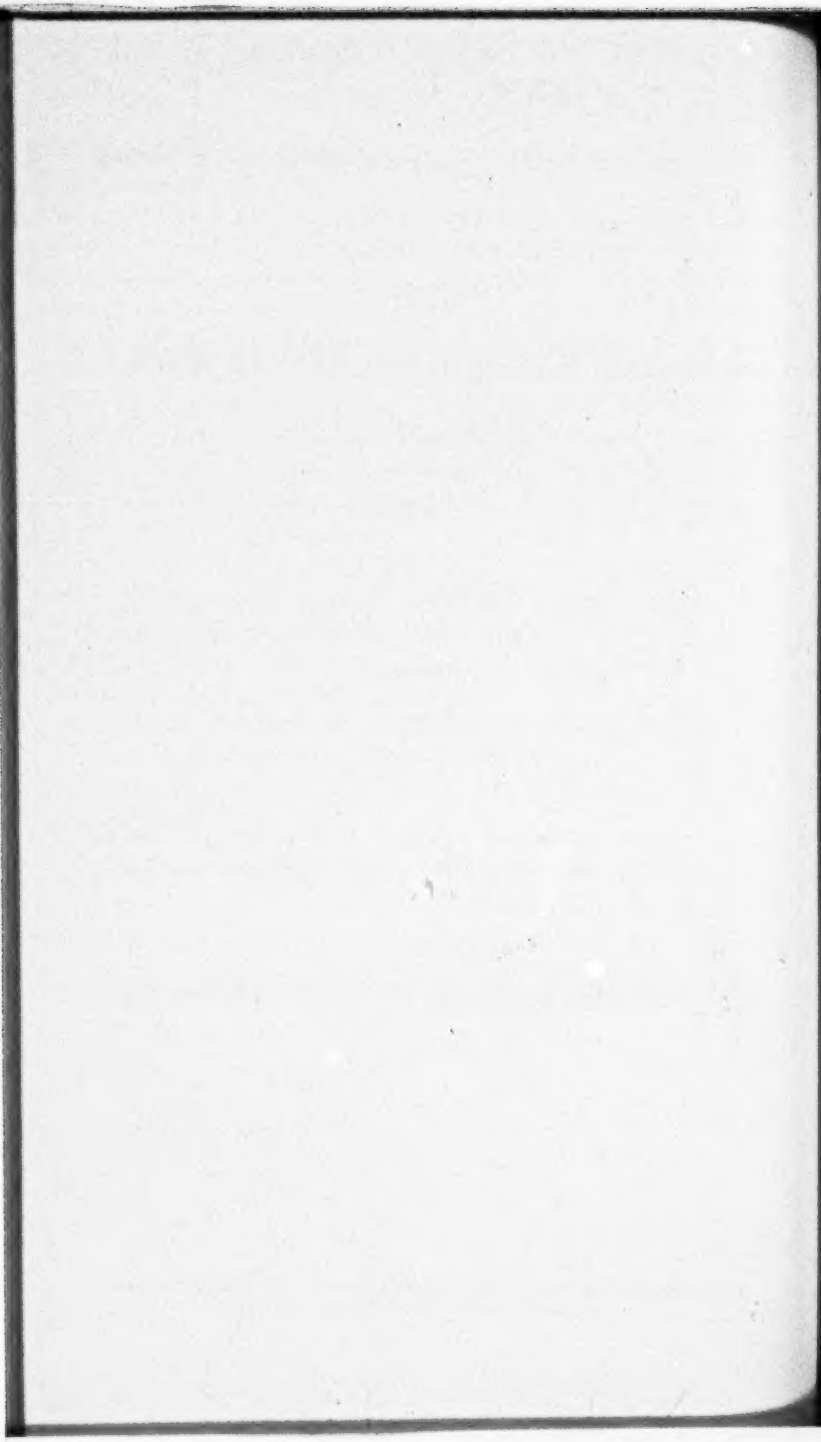

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SUPPLEMENTAL BRIEF FOR THE APPELLANTS.

Pursuant to leave of court granted at the oral argument on November 1, 1929, this supplemental brief is filed directed to the question raised for the first time

by Mr. Justice Brandeis and to reply to certain arguments and facts stated in appellees briefs of which time did not permit discussion at the argument.

I. The Election of the Carriers Not to Perfect Their Appeal from the Decree of the Lower Court Does Not Affect the Right of the Appellants to Have the Order Enjoined as in Excess of the Statutory Powers of the Commission, in Violation of the Law and Therefore Void.

The question raised by Mr. Justice Brandeis was whether the election of the carriers not to perfect their appeal from the decree of the lower court destroyed the grounds of this appeal as a matter of substantive law. This resolves itself into the question of whether appellants must show that the carriers themselves could not voluntarily establish the scheme of rates and allowances prescribed because it is unreasonable, discriminatory, prejudicial or otherwise violative of the Interstate Commerce Act.

Failure of the carriers to perfect their appeal does not place appellants in the position of attacking a scheme of rates and allowances voluntarily established by the carriers. Regardless of their submission to the decree of the lower court, the carriers had no choice in the publication of the rates prescribed once the order of the Commission was permitted to go into effect by the order of the lower court. Their subsequent decision not to appeal (R. 157-8) cannot change the rights of appellants nor can it properly be considered a voluntary institution of the scheme of rates prescribed by the Commission, nor place appellants in the position of attacking a scheme of rates so instituted.

Freedom to contract is one of the elemental property rights protected by the Fifth Amendment to the Constitution. It can be regulated,—it can be interfered with in the public interest but only under authority of law and in compliance with due process. Subject to the rules of the Interstate Commerce Act, shipper and carrier alike are entitled to enter into any contract they may choose for the transportation of cotton. Though all orders of the Commission run in terms against the carriers, the effect is to fix the price, or other conditions of the contract which shippers may enter into with carriers. Nor may either shipper or carrier depart from the price or conditions so fixed. For the Commission to interfere with this right to contract in a manner not authorized by, or in accordance with the law under which it acts, means a taking of appellants property without due process and violates the Fifth Amendment to the Constitution. The Interstate Commerce Act sets up a system of limited regulation of the contracts between carriers and shippers. The Commission must keep within the limits.

Prior to the order of the Commission the carriers offered to all buyers two contracts embodying practically the same physical movements of the cars but substantially different privileges and costs. For these contracts they have made different prices, offering to all shippers of cotton a local delivery contract at one price and an export contract with its greater values and costs at a price 3 cents higher. Appellants not needing the additional services embodied in the second contract, ordinarily bought the lower priced contract for local delivery at the ports. Clearly but for the order of the Commission the carriers would have con-

tinued to offer the two contracts and appellant could continue to purchase the one they desired.

The Commission ordered the carriers to discontinue the sale of these two contracts at different prices. It went further than that. It ordered that the price of the local delivery contract used by appellants be raised one cent in order to compensate the carriers for the extra service performed under the "shipside" contracts, thus expressly recognizing the extra costs to carrier of the extra services included in the export rates.

The Commission's order, of which the report is expressly made a part, prohibits allowance to appellants for delivering cotton from their warehouses to shipside, although the Commission expressly found that "cotton delivered to the waterfront warehouses or compresses is not delivered at shipside" and that delivery to shipside was included in the tariff obligation of carriers, and authorized allowances for movement to ship's berth on wharves not adjacent to the warehouses. (R. 45, 68.) That this cost of delivery to shipside is a material item is shown by the testimony of Witness Steele for the Shipside Density Compress at Galveston that only about 6 cents per bale was saved in case of delivery to adjacent wharves compared to delivery at other piers at Galveston, where the average drayage charge was 18 cents per bale. (R. 208.) It is shown further by the testimony of W. L. Clayton at page 501 of the record that the 3½ cent cost of delivery had not been materially reduced from the waterfront warehouses, and by the testimony of D. Sumners showing a total delivery cost of 27 cents from the Long Reach Warehouse to ships berth on the adjacent wharves. (R. 908-13.)

Exhibits Nos. 3, 4, and 5 received in evidence before the lower court, referred to at page 165 of the printed record, and made a part of the record in this court, are affidavits of officials of appellants establishing the great and irreparable injury the rate system prescribed by the Commission would do them. It would increase the rates paid 5¼ cents per bale on the 1,522,000 bales handled at their "waterfront" warehouses during the season of 1926-27, or $82,530.00 per year. It would deprive them of the advantage of the location of their facilities and place them at an actual net disadvantage as compared to interior and uptown merchants. The immediate pecuniary damages run in fact to many thousands of dollars per year and those due to the equalization prescribed to much greater sums.

That the appellants have at stake a vital and substantial interest is therefore apparent. They have been deprived of their right to purchase a local delivery contract at the rate of 80 cents (used for illustration only). The price has been increased to 81 cents by reason of a void order of the Commission. They have been refused the right to delivery at shipside by the carriers from their warehouses unless the cotton is sent to wharves owned and operated by other parties. Under these circumstances the failure of the railroads to appeal from the decree of the lower court, even if interpreted as acquiescence of one party to an illegal interference with the freedom of contract, cannot as a matter of substantive law prevent these appellants from insisting upon due process. If it were necessary for a shipper to show that the scheme of rates and allowances prescribed is itself unreasonable, discriminatory or prejudicial without reference to

whether the necessary predicates to the validity of the order of the Commission had been established, it might also be urged that the proper tribunal to pass upon such questions is the Interstate Commerce Commission. The shipper would therefore be referred back to the Commission where his complaint, bringing into issue matters just passed upon, would promptly be confronted by an order of dismissal from which he would have no appeal since such an order would clearly come under the "negative order" principle established in *Procter & Gamble v. United States,* 225 U. S. 282. This would mean that the shipper, regardless of his vital interest and the effect upon his property, has no redress from an order of the Commission though unsupported by the evidence, beyond the power of the Commission, and entered for the express purpose of regulating commercial competitive conditions. These appellants were parties to the proceedings before the Commission and their interest was recognied by the Commission. To deny their right to insist upon the invalidity of an order in which the carriers acquiesce would make Section 212 of the Judicial Code giving any party the right to challenge the order, a hollow mockery. By that section Congress has expressly conferred upon parties situated like appellants the right to challenge the validity of the order of the Commission.

Obviously, the holding in *Edward Hines Yellow Pine Trustees v. United States,* 263 U. S. 143, 68 L. ed. 216 is not applicable here. There this court said:

> "But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges cancelled. They must show also that the order

> alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do. It is not alleged that the carriers wish to impose such charges, and, but for the prohibition contained in the order would do so. For aught that appears carriers are well satisfied with the order entered. Cancellation of a charge by which plaintiffs' rivals in business have been relieved of the handicap theretofore imposed may conceivably have subjected plaintiffs to such losses as are incident to more effective competition. But plaintiffs have no absolute right to require carriers to impose penalty charges."

In this case the carriers were so little satisfied that they sought to enjoin the order. They had no option regarding the publication of the rates and their decision not to appeal is not indicative of their satisfaction. Furthermore, the order the plaintiffs there sought to enjoin ordered the carriers to cease and desist from collecting a penalty charge of $10 on cars of lumber held at reconsignment points. It did not increase the charges to be paid by plaintiffs in order to compensate carriers for the additional service required by intervenors nor deprive them of the privileges granted other shippers. The only effect upon plaintiffs was to reduce the disadvantage imposed upon their competitors and enable them to compete more effectively. This case recognizes that where there is legal injury shippers may show the order is void because it is beyond the power of the Commission.

In the case of *Baltimore & Ohio R. Co. v. United States*, 264 U. S. 258, 68 L. ed. 667, the defendants contended that plaintiffs had not the legal interest necessary to entitle them to challenge the order. Plaintiffs in that case were railroads seeking to overturn

an order of the Commission giving the New York Central permission to acquire certain Chicago terminal railroads. Mr. Justice Brandeis, however, after pointing out that they had in fact a vital interest and would suffer substantial pecuniary losses, said:

> "If as suggested in Interstate Commerce Commission v. Chicago, R. I. & P. R. Co., 218 U. S. 88, 109, 54 L. ed. 946, 957, 30 Sup. Ct. Rep. 651, a legal interest exists where carriers revenues may be affected there is clearly such an interest here.
>
> "This loss is not the incident of more effective competition. Compare Edward Hines Yellow Pine Trustees v. United States, 263 U. S. 143, 148, *ante* 216, 220, 44 Sup. Ct. Rep. 72. It is injury inflicted by denying to the plaintiffs equality of treatment. To such treatment carriers are under the Interstate Commerce Act as fully entitled as any shipper."

On the basis of the 1926-1927 shipments shown in Exhibits 3, 4 and 5, these appellants will be required to pay an additional $82,530.00 in increased freight rates, and yet will be denied the service or allowance given others for moving their cotton to shipside. Clearly this comes within the above language.

In the court below the railroads complained because the additional freight collected from appellants would not cover the additional costs of the service given intervenors and a reduction in their revenues would result. Obviously this reduction of revenues is not the grievance of these appellants. *Interstate Commerce Commission v. Chicago R. I. & P. R. Co.*, 218 U. S. 88, 109 54 L. ed. 946, 957. But obviously the interference with their right to contract, the increased rates and denial of allowances are grievances of which these appellants may properly complain.

In many respects the position of these complainants does not differ from that of the shipper complainants in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, 56 L. ed. 83. There this court approved the holding of the lower court sustaining the right of the complainants to maintain the suit on the ground that "any party whose rights of property are in danger of irreparable injury from an unauthorized order of the Commission may appeal to a federal court of equity for relief." *F. H. Peavey & Co. v. Union Pac. R. Co., etc.*, 176 Fed. 409, 417. That court also said that the "final order of the Commission, which prohibits the railroad companies from making any allowances for the elevation, necessarily deteriorates the value of the property, diminishes the volume and profit of the business, strikes down profitable contracts, and destroys the right of parties in favor of the transfer to make such contracts." This, which applies with equal force to the case at bar, was held to entitle Diffenbaugh to challenge the order of the Commission.

This specific point was not raised in the case of *United States v. New River Coal Company*, 265 U. S. 533, 68 L. ed. 1165, but by considering the validity of the objections urged to the order it may fairly be argued that this court recognized the legal interest of the plaintiffs in that suit. The order issued made the report, which held that Rule 4 governing the distribution of cars was not unreasonable, a part of the order, and dismissed certain complaints against the rule. The carriers announced that they considered themselves ordered to establish Rule 4 and threatened to do so. The New River Coal Company, and not the carriers, thereupon sought to enjoin the order. This court not only held that the rule prescribed was part of the

order, but, by proceeding to deal with the question of the validity of the order, recognized the right of the shipper to question it, even though the carriers had expressly announced their acquiescence.

In *Skinner & Eddy Corp. v. United States,* 249 U. S. 772, this court recognized the right of a shipper whose rate was being increased to enjoin the enforcement of an order on the ground that "the Commission has exceeded its statutory powers; and that, hence the order is void." That is essentially the contention of these appellants, and, as was said by Mr. Justice Brandeis,

> "In such case the courts have jurisdiction of suits to enjoin the enforcement of an order even if plaintiff has not attempted to secure redress in a proceeding before the Commission."

By consideration of the objections urged to the validity of the order of the Commission, the court sustained the legal right of shippers to insist upon the observance by the Commission of the limitations and conditions controlling its exercise of power.

In *Western Paper Maker's Chemical Company v. United States,* 271 U. S. 268, 70 L. ed. 941, the right of the shippers to require the Commission to stay within the rules was tacitly recognized. Since in the *Assigned Car Cases,* 274 U. S. 564, the railroads were involved only as the owners and users of railroad fuel cars, that case likewise sustains the right of shippers who have vital interests at stake to demand compliance with the law on the part of the Commission before it undertakes to limit the contractual rights of shippers.

In the Sacramento case, *United States v. Merchants & Manufacturers Traffic Association,* 242 U. S. 178,

61 L. ed. 233, an order granting the carriers Fourth Section relief was attacked. As pointed out by Mr. Justice Brandeis the order of the Commission was permissive merely. This as has been recognized by this court in the cases hereinbefore discussed is quite different from an obligatory order requiring the carrier to publish a specific increased rate in order to effect an equalization at appellants' expense and prohibiting the carrier from making an allowance to certain shippers. Furthermore, plaintiffs there were not parties before the Commission.

No case can be found in which shippers, having vital and substantial pecuniary interests at stake, have been denied the right to attack an order of the Commission which is unsupported by the evidence, is beyond the statutory power of the Commission, is arbitrary and in violation of law, and intended to equalize commercial conditions. Congress expressly recognized that the shippers rights were equally affected by orders of the Commission and that shippers were entitled to the same due process as carriers when it gave any party before the Commission the right to become a party to a suit calling the validity of an order in question, or, even as this court has said to institute such a suit. *Baltimore & Ohio R. Co. v. United States,* 264 U. S. 258. These appellants were parties before the Commission and their interest expressly recognized. Furthermore, as we have pointed out, they have vital pecuniary interests at stake to which the order of the Commission does violence without the due process upon which they are insisting and in direct violation of the law which it is the duty of the Commission to enforce.

II.

Because of lack of time for doing so at the oral argument leave was sought and obtained to reply to the arguments raised and facts stated in the briefs of appellees. The remainder of this brief is devoted to that purpose.

A great deal of confusion exists in the briefs of counsel for the government and the intervenors because of their failure to distinguish between the evidence relating to the purely intrastate movement and rates and the respective interstate domestic and export movements. The order of the Commission here in controversy is expressly restricted to "export and interstate domestic rates." (Government brief, page 8.) As stated on page 24 of the government brief the Texas Commission increased the intrastate rates to the ports 1 cent per pound and it may be stated, merely as information, that an appeal from that decision is now pending in the courts of Texas.

Some significance is attached by both intervenors and government to the history of the two-rate structure. On that question we refer to the testimony of Witness West, R. 325, and Witness Dalzell, R. 331. Regardless of the history, however, the fact is the carriers had established and the Commission approved a two rate system with which the Commission had no power to interfere unless it violated the law. Interior merchants used the domestic rates as well as port merchants. Witness J. C. West, R. 189. Witness McCord, R. 203 and 205. Since unequal rates are discriminatory or prejudicial only where the service is the same or equal, there was no power in the Commission to interfere here where both the cost and value of service under the export rates were greater. The

government points out that other transportation conditions may also be considered. Brief page 47. It then points out that export rates are usually lower than domestic on other commodities. Obviously, under the doctrine of *Import Rate Case,* 162 U. S. 197, export rates may be maintained either at a higher or lower level than domestic rates depending on varying transportation rates conditions. Neither the Commission nor the government points out any transportation condition which would counteract the evidence regarding the greater service cost and value under the export rates.

At page 9 of the brief filed by the intervenors it is asserted that carriers were delivering cotton upon the wharves at shipside on the domestic rate. R. 201 was referred to. All this cotton was interior concentrated cotton. (R. 203) Witness McCord testified that these shipments were not delivered at the wharf but at the compress back of the wharf, and that the compress delivered the cotton to shipside and charged the shipper therefor. (R. 203, 205) See also testimony of Witness West at page 191 of the record. The Commission instituted Docket 14940 to investigate this very situation and found that there was nothing illegal in application of the domestic rates on shipments such as these upon which complete export service was not rendered by the carriers. (R. 45)

At page 6 of intervenors brief and at page 14 of the government brief it is stated that the two rate system resulted in actual equalization before the advent of "waterfront" warehouses. That this was not the case is shown by the following evidence.

Witness Griffin testified it cost his firm 8 cents per hundred pounds to get to the waterfront at Houston.

(R. 224-225.) Exhibit A-10 at page 8 of the Original Exhibits shows switching charges varying from $6.30 to $16.20 per car from various warehouses, and barge service at 14 cents per bale available to some and not to others. See also Exhibit A-120 (Original Exhibits page 116) and Exhibit A-7 and the following testimony: Witness Steele, R. 209; Witness Griffin, R. 224; Witness Reed, R. 217; Witness Kemper, R. 231; Witness Toombs, R. 222; Witness Eggers, R. 234-5.

These appellants are not, as the government contends at page 64 of its brief, seeking lower railroad rates to their plants than to other warehouses in the same switching limits. As a matter of fact the same rate applied to all points in the switching limits before the order of the Commission. Now appellants must pay greater cost than others by the amount of the allowance they do not get. This creates itself an illegal situation, condemned in the case of *Union Pacific Railroad Co. v. Updike Grain Co.*, 222 U. S. 215, 220, where the Court said:

> "To receive the benefit of such work by one elevator without making compensation therefor would, in effect, be the involuntary payment by such elevator of a rebate to the railroad company for it would enable the railroad to receive more net freight on its grain than was received from its competitor located on the railroad tracks. This cannot be directly done, nor indirectly by means of regulation."

The contention on page 70 of the government's brief that the order of the Commission does not prohibit allowances to appellants is sufficiently answered by *United States v. New River Company*, 265 U. S. 533, where as here the report was expressly made a part of

the order. Both the government, and the intervenors while stating that the test of the legality of the allowance is whether a substitute transportation service is rendered, refuse to apply that test to the movement of the cotton from the warehouse of appellants to shipside. The Commission found that under their tariffs the carriers were under the legal duty to make shipside deliveries and that "cotton delivered to the waterfront warehouses or compresses is not delivered at shipside." (R. 45.) That allowances were approved to wharves not adjacent is additional proof that the Commission held the carriers had not performed their complete obligation.

The method by which the shipper performs the service the carriers is obligated to render is unimportant. The government attempts to emphasize the fact that it is performed within the bounds of a single plant, ignoring the fact that the warehouse and wharf are separate facilities. (Brief, page 73.) This is of no significance anyway in view of the approval of the allowance for elevation service taking place entirely within a single plant in the Diffenbaugh case, 222 U. S. 42, and the decision in *United States v. Baltimore & Ohio R. R. Co.*, 231 U. S. 274, 58 L. ed. 218, where this court sustained an allowance to Arbuckle Brothers for handling their own sugar out of their own refinery to their own dock and themselves delivered it to the defendants west of the river, using only property and facilities that were owned by them and employees that were paid by them. The emphasis was correctly placed upon the question of whether the service for which an allowance was sought was performed in place of a service the carrier was obligated to render.

Equally fallacious is the argument that appellants

would not permit the railroads to enter their warehouse compartments. They don't ask carriers to do so any more than uptown warehouses seek to have them do so. They simply ask that the railroad deliver the cotton to shipside or pay them an allowance for doing so. It is just as convenient and necessary and no more so to them to deliver it to shipside rather than to deliver it to the cars and have the carriers switch it to the wharves as it is to uptown warehouses. As a matter of fact the drays run directly through the uptown warehouses and load the cotton on the drays and yet allowances for this service were approved. (Witness Herbelin, R. 735-6.) It is the switching of the cars to the shipside that is the service which delivery by their own methods replaces in both cases. Yet the Commission has prohibited an allowance to appellants.

The contention raised by intervenors at page 81 of their brief that the prohibition of allowances to appellants on cotton moved to shipside is merely a tariff interpretation is in direct conflict with the finding of the Commission that under their tariffs carriers were obligated to deliver the cotton "at shipside" and that this complete service had not been rendered on cotton delivered to waterfront warehouses. (R. 45.) In its order the Commission was prescribing rules for the making of tariffs, dealing with rates and allowances for the future and not with tariff interpretation.

The assertion is made at page 33 of the intervenors' brief and at page 37 of the government's brief that the *average detention* of cars containing export movements is little greater than the *free time* allowed on domestic shipments. This is not a comparison of like things but even so is not borne out by the record. Exhibit

No. A-186 (Original Exhibits, page 224) shows an average detention of 3.15 days in November, 4.58 in December, and 5.27 in January on through export cotton with 3.85 days, 3.95 days and 4.18 days on cotton marked for export in the same months.

Shipments on through export bills of lading at New Orleans were detained as much as 7 or 8 days during the months of November and December on the lines of the Gulf Coast Company. On the Louisiana Railway & Navigation Company the average detention is shown as 10 days. In the case of the Southern Pacific Company certain shipments were actually unloaded and put in the warehouses for an average of 11½ days in 1924 and 6⅛ days in 1925. On the Texas & Pacific shipments of export cotton were detained an average of 4.4 days during the months of October, November and December, 1924, and 3.5 days during the same three month period in 1925. Exhibit No. A-204 (Original Exhibit Volume, page 245).

At page 36 of their brief intervenors point out there is no testimony as to expedited service on export shipments. At page 38 of the government brief such testimony is referred to at R. 242, but it is asserted that this is not published in tariff form. Of course there is no requirement that such rules be published in tariff form, nor does that affect the cost to the carrier or value to the shipper of the expedited service which the testimony shows is rendered. See Witness Martin, R. 187 and Witness Booth, R. 242.

At page 35 of their brief intervenors state that the undisputed evidence shows the lower commercial value of the export bill. We refer to the testimony of a witness for intervenors, J. L. West, quoted on page 36 of appellants brief as well as the other testimony there referred to.

At page 37 of intervenors brief is quoted testimony of their witness Griffin to the effect that export shipments were not delivered in the carriers own terminals but to the wharves or terminal companies and that accumulation of cars in the yards was prevented. Carriers' Witness Booth testified that the export cotton congested the yards of carriers, while there was no delay on delivery at domestic rates. (R. 184.)

Pages 25 to 31 of the brief of intervenors and pages 38 and 39 of the government brief give the misleading impression that the cotton moving to the waterfront warehouses loads more lightly and receives more mixed platform service than that of interior or uptown merchants. The Commission found that the physical service performed was substantially equal. This was limited to physical handling or line haul movement of the cars as shown by the illustration given (R. 61) and by the separate treatment of the transportation elements differentiating the two services. The testimony upon which appellees rely to support this finding is likewise limited to physical handling. (Witness Reed, R. 834; Witness Cummins, R. 809; Witness Brown, R. 526.) As to the cost and value of the extra services on the export traffic which the carriers officials testified justified the higher export rates, see appellants brief pages 37 and 38.

Counsel assert that the loading on flat cotton to the waterfront warehouses is only 27 bales contrasted with 72 on export cotton. There is no testimony in the record showing the loading of flat cotton moving to the ports on interstate bills of lading or that any moves. Exhibit A-105 referred to by the intervenors covers only the movement of Texas intrastate cotton to interior concentration points. Pages 804-805 of the rec-

ord refer to exhibits covering only Texas intrastate movement of flat cotton to the ports. Flat cotton in Texas moves at the same rates as compressed in transit cotton. Interstate it moves at rates 12 cents higher so that the Texas situation is not illustrative of the movement under rates with which the Commission was dealing nor is there any showing of a movement of flat cotton interstate to the ports.

Counsel try to assimilate the advantages which the Commission found justified one free concentration in the interior to cotton moving on the export rates. Interior concentrated cotton moves on both rates and to all warehouses. Approximately one half of the cotton moved by Anderson, Clayton & Co. to the ports has had interior concentration with its attendant higher loading and less mixed platform service at the ports. (R. 296.) Of course, it is apparent that this interior concentrated cotton must itself use mixed platform service at interior points, such as Dallas and that the lesser service at the ports does not mean any actual economy. The uptown concentrator most active in the case does not buy much interior concentrated cotton. (Witness Griffin, R. 225.)

In contrast with the 72 bale loading claimed for export cotton by intervenors on the basis of the figures regarding interior concentration, the Texas & Pacific showed an average loading of only 49 bales in 1923 and 55 bales in 1924, which is lower than the loading of 63 bales on compressed in transit cotton which counsel incorrectly assert constitutes appellants chief movement. (Exhibit No. A-204, Original Exhibit volume page 252.)

On page 44 of intervenors brief the warehouse located at Symbol V on Appendix A is called a water-

front facility. This is incorrect as no wharf is operated in connection therewith and all its cotton must be moved to other wharves.

Counsel for the government on page 81 of his brief contends that the Transportation Act, 1920, amended Section 15 (1) of the Interstate Commerce Act so as to authorize the Commission to prescribe the specific manner in which the rates shall be adjusted to remove the discrimination. The 1920 Act added nothing to the power of the Commission to remove discrimination nor was it intended to give the Commission that power but to enable the Commission to prevent carriers from fixing unreasonably low rates thereby destroying competing railroad and water carriers. Report of Committee on Interstate & Foreign Commerce, Congressional Record, November 11, 1919, page 317. Congressional Record, December 17, 1919, page 743. *New England Divisions Case*, 261 U. S. 184, 190, note. At any rate this does not affect the argument that the Commission's power is limited to issuing a cease and desist order in discrimination cases. The additional power to prescribe a minimum rate is in the same category as the former power to prescribe a maximum rate. Neither is appropriate nor intended for use in such cases.

Respectfully submitted,

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Counsel for the Appellants.

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CHARLES ELMORE CR

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In the

Supreme Court of the United States

October Term, 1929

No. 19

ALEXANDER SPRUNT & SON, INC., ET AL,
versus *Appellants,*
THE UNITED STATES OF AMERICA, ET AL,
Appellees.

On Appeal From the District Court of the United States for the Southern District of Texas, Houston Division.

Brief for Appellees, Arkansas Cotton Trade Association, Oklahoma State Cotton Exchange, Galveston Cotton Exchange, and Texas-Oklahoma Compress & Warehouse Association, Intervenors

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STATEMENT OF THE CASE

This case involves the validity of an order of the Interstate Commerce Commission requiring the carriers

participating in the movement of cotton to the Gulf ports to remove the discrimination found to exist as between the export and domestic rates on cotton by establishing certain specific rates prescribed by the Commission for those movements.

The circumstances which finally resulted in the investigation and order of the Commission here involved date back to a controversy between the common carriers operating wholly within the state of Texas, on the one hand, and the Railroad Commission of Texas, on the other. For a great many years the so-called domestic rates on cotton from Texas interior points to the Gulf ports for local application were exactly the same as the rates for export or coastwise ship movement; that is, there was one rate to the ports for application in connection with the export movement of cotton and for domestic movements alike. Up to the year 1910, the rate prescribed by the Texas Railroad Commission was applied to the water-front, and there was no difference between the export and the intrastate domestic rate. In 1910, the Texas Commission made a reduction in its rate from 55 cents to 51 cents per 100 pounds. The railroads refused to apply to the movement of cotton to the shipside the rates prescribed by the Texas Commission, and thus continued in effect a 55-cent export rate in conjunction with the 51-cent domestic rate. That condition obtained for a short period of time, when the export and domestic rates were again equalized. They remained the same until September 18, 1917, at which time the railroads

again published an export rate higher than the rate applicable in connection with the domestic movement. Therefore, from 1890 to 1917, except during a short period in 1910, the export rates from points in Texas to the ports were the same as the domestic rates. (R. 324-25). About the time the carriers were preparing to publish the dual system of rates for application in Texas, they also published a similar system of rates for application from points in Louisiana to the Louisiana ports. The Louisiana rates were suspended by the Interstate Commerce Commission in *I. & S. Docket 955, Louisiana Cotton Case, 46 I. C. C. 451*, and in passing upon the proposed schedule the Commission stated its purpose at page 463 of that decision:

> "Under the normal adjustment of rates as between local delivery and shipside delivery, or for export, the rate for the latter would be 53 cents. The proposed rate is 52.5 cents, which is the rate on export cotton to New Orleans from Texarkana, Dallas and other Texas points, and, under the fourth section, can not be exceeded. The respondents have shown that unless the rates from Louisiana points to New Orleans for export exceed the rates to the same place for local delivery by not more than 3 cents injustice to the interior points will result. The converse is true as to rates for export that exceed the local rates by less than 3 cents, and any diminution in this spread is an advantage to the interior points and a disadvantage to New Orleans. To that extent we find that the rates from Shreveport and from other points taking similar rates to New Orleans proper under

the proposed adjustment should be reduced in order to preserve the spread of 3 cents. In other words, when the rate for shipside, or for export, is 52.5 cents the rate for depot delivery should not exceed 49.5 cents."

It is to be observed that the reason for the dual system of rates, as stated by the Commission, was to equalize port concentrators with interior concentrators. The Commission stated that any diminution in the spread between the export and the domestic rates gave to the interior points an advantage and created a corresponding disadvantage to the concentrators in New Orleans. In other words, the dual system of rates, whereby a higher rate is applicable to export commerce than in connection with domestic commerce, was for the purpose of equalizing port concentrators with interior concentrators in the transportation cost of reaching shipside.

The dual system of rates, as established in Texas and as approved for application at Louisiana ports by the Interstate Commerce Commission in the *Louisiana Cotton Case*, subsequently came before the Commission for consideration in connection with the rates on cotton from other southwestern states to practically all of the Gulf ports. In the case of *Galveston Commercial Association vs. Alabama & Vicksburg Railway Co., 77 I. C. C. 388*, at pages 412 and 413, the Commission considered the question of establishing export rates higher than the domestic rates, and cited with approval the

quotation above made from the *Louisiana Cotton Case.* At page 413, the Commission expressly stated that the purpose of the dual system was to establish a uniform basis of fixing export rates on cotton from the Southwest to New Orleans and the Texas ports, and further specified that the export rates should exceed the domestic rates by the amount of the charge made for moving the cotton from the concentration points at the ports to shipside. The Commission stated, also, that the reason for establishing that difference was to eliminate the discrimination pointed out at page 463 of the *Louisiana Cotton Case, supra.*

Under that system of rates the situation was substantially as follows: A concentrator at Dallas could collect his cotton into shipping lots, and have it forwarded to shipside on a through bill of lading marked for export at the rate of 83.5 cents. A port concentrator could purchase cotton at Dallas, move it to the port on the domestic rate, and, after concentration and merchandising, redeliver it to the carrier as an outbound shipment, pay the cost of switching from his facility to the waterfront, and make a claim on the carrier for the application of the through export rate from Dallas to shipside. The carrier would thereafter readjust the charges collected under the domestic rate into the port and the charges collected for the movement from the port concentrator's facility to shipside, and settle with the shipper on the basis of the through rate of 83.5 cents, from Dallas to shipside, in the manner described by this court in *Atchison, Topeka &*

Santa Fe vs. United States, 49 Sup. Ct. Rep. 494, at page 498, and in *Central Railroad of New Jersey vs. United States, 257 U. S. 247.*

The cost of moving cotton from the warehouses at the port to shipside, plus the inbound domestic rate, substantially equalled the export rate from interior points of origin to shipside. Therefore, in actual practice, the port concentrators did not avail themselves of the concentration privilege, but simply paid the inbound domestic rate and absorbed the outbound switching cost or drayage cost to the water-front in lieu of filing concentration claims. In either event the respective costs of reaching shipside, for both port concentrator and interior concentrator, were substantially equal.

The Exhibit A-121, before the court in its original form, serves well to illustrate the situation. That exhibit has been reproduced herein as Appendix "A". An examination of Appendix "A" will show that the application of the dual-rate plan produces the following results: Cotton coming in from interior points would reach the yard shown at symbol (5). There the line-haul trains would be broken, and the cotton would be switched to the various facilities located at symbols (F), (G), (H), (K), (M), (O) and (J). After concentration and merchandising, the carriers were obligated under the tariffs to move the cotton from symbols (F), (G), (K) and (O), a distance of approximately 5 to 7 miles, to the wharves located between the symbols (7) and (8). A shipment of cotton moving on a through

bill of lading from interior points going to shipside would move in the line-haul train to symbol (5), and there be broken up in the same manner as a domestic shipment. That shipment would also be switched through the terminals shown at (F), (G), (H) and (K), and thereafter would be switched to the shipside wharves between symbols (7) and (8).

It will be observed from this description that cotton going to the uptown warehouses on the domestic rates received less service to the extent of the distance from uptown to the waterfront than the cotton going on a through bill of lading to the wharves; but after the cotton was concentrated at the uptown facilities (F), (G) and (H), and then transported from there to the waterfront, the total transportation in each instance, assuming that delivery would be made at the same wharves, would be substantially the same. It is obvious, therefore, that the system of rates fixed by the Commission in the *Louisiana Cotton Case, supra*, and in the *Galveston Commercial Association Case, supra*, did result in substantially equal total charges for substantially equal total services under the conditions which obtained at that time.

It is also true that there were, and still are, certain warehouses, handling cotton under the concentration arrangements accorded up-town facilities, which were situated at such distances from the wharves that the service from such warehouses would be greater than the service direct to the wharves or the service through

up-town facilities. For instance, on Appendix "A," symbol (V) represents the Clinton compress. It is obvious from a glance at the map that a shipment coming in at symbol (5), moving through the yards at symbol (0) thence to the Clinton compress for concentration, and after concentration moving from symbol (V) to the wharves between symbols (7) and (8) would receive a greater service from the carrier than in the case of shipments direct from the interior to the wharves or shipments through the facilities at (F), (G) and (H) to the wharves. The facts are, however, that the great bulk of the cotton was handled at the facilities located similarily to the facilities at symbols (F), (G) and (H), and that, at both Houston and Galveston (see Exhibit 189, Record 230), a substantial equalization existed as between port concentrators and interior concentrators.

That equalization was maintained, to the apparent satisfaction of both classes of shippers, until the construction of a warehouse for the concentration and merchandizing of cotton immediately at shipside on the pier at Galveston. From that warehouse cotton could be delivered directly to the shipside wharves without the necessity of additional rail transportation because of the provisions in the ship's contract which obligated the outbound vessels to accept the cotton moving to foreign destinations at any point on the wharves within 200 feet of the ship's tackle. This distance of 200 feet actually extended from the water line of these water-front warehouses to as much as one-third of the way across the interior of the water-front warehouses

(R. 45). Thereafter, a similar shipside facility was constructed at Houston, as shown by Appendix "A", symbol (P) and further illustrated by Appendix "B". This facility is referred to as the Anderson-Clayton Plant, and is operated under the name of the Houston Compress Company. The construction of these warehouses at water-side made it possible to have cotton actually delivered within hand-trucking distances of shipside, upon the domestic rates, 3.5 cents less than the export rate, as a result of the fact that the interstate rates, and the intrastate rates established by the Texas Railroad Commission, were applicable for delivery at shipside. Circular 401, dated March 16, 1897, which was still in effect at the time this controversy was under investigation, required the carriers to deliver cotton upon the wharves at the domestic rates. (R. 185). It was shown of record, for instance, that the carriers were actually transporting cotton from interior points and making delivery upon the wharves at shipside which had been, previous to the delivery thereof to the rail carrier at interior points, booked for delivery to a particular steamer docked at the particular wharf where delivery was made by the rail carrier at the ports, and on such cotton the carriers were collecting the domestic rates instead of the export rates. The actual booking for foreign commerce had been made prior to the delivery to the rail carrier. (R. 201).

Referring again to Exhibit A-121, it is obvious that a concentrator located in the vicinity of (F), (G) and

(H), moving his cotton on a domestic rate of 80 cents, for instance, which rate was also applicable in connection with a movement to the wharves located between symbols (7) and (8), was receiving less transportation service than would be involved in connection with the movement of the same cotton direct to the wharves. It is also obvious that the cost of moving the cotton from symbols (F), (G) and (H), to the wharves located between symbols (7) and (8), would be an additional cost over and above the amount of the domestic rate, and, therefore, resulted in a disadvantage to the uptown, or back-of-the-water-front facilities. The situation in connection with the shipments concentrated at an interior point was not different in any way from the situation described in connection with the facilities located at (F), (G) and (H), except that, in connection with the cotton concentrated at interior points, less service would be performed by the carrier than in either of the instances referred to above, namely, direct delivery to the wharves or delivery through the facilities at symbols (F), (G) and (H).

In connection with interior concentrated cotton moving on a through export bill of lading or on a bill of lading marked for export, such cotton is moved direct through the terminals at the port to the shipside facilities and is delivered to the wharves of the outgoing vessels by the carriers and the cost of unloading it onto the wharves is absorbed by the carriers. There is no question involved in connection with this character of cotton of allowances to the shipper to cover

a part of the transportation, as is the case in connection with cotton concentrated at the uptown facilities, such as are shown at symbols (F), (G) and (H), Appendix "A". The carrier performs the complete transportation service to the waterfront on interior concentrated cotton moving on export bills of lading and makes delivery of such cotton upon track No. 1 to such facilities as are depicted by Exhibit A-33, Appendix "B". Cotton for the appellants moving inbound for concentration at such waterfront facilities would move in exactly the same manner except, as will be hereinafter shown, that it would require more transportation service and more rehandling by the carrier in order to move the same amount of cotton to such facilities for concentration. The cotton for concentration at the waterfront facility shown by Appendix "B" would be delivered, however, to the same facility and within a few feet of the same track upon which the interior concentrated cotton would be delivered to shipside and the carriers would absorb more cost for unloading than is absorbed on export cotton.

The situation resulting from the construction of the shipside plant at Galveston was brought to the attention of the Commission by the filing of a complaint, known as *Docket 13991*, by Weatherford-Crump & Company, located at Houston, complaining of the application of the domestic rates on cotton delivered at the wharves at shipside and on cotton delivered within the vicinity of the wharves at shipside. Before a decision on that complaint was rendered,

namely, on June 30, 1923, the Commission instituted a general investigation into the conditions above described, stating that its purpose was to investigate the domestic and export rates on cotton from points in the states of Oklahoma, Arkansas, Texas and Louisiana to Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas, and to New Orleans, La., and Mobile, Ala., with the object of determining, first, whether or not the application of the domestic rates to the wharves resulted in illegal practices; and, second, whether any readjustment should be made in existing tariff regulations or rates in order to avoid and remove whatever undue preference, if any, that resulted, or might result, in favor of said water-front shippers or localities, and such undue prejudice that resulted, or might result, against the up-town shippers or localities, or any other undue prejudice against other shippers or localities that might be found to exist, and entering such other order or orders as might be found proper in the premises.

After extensive hearings the Commission rendered its opinion upon this investigation in *Rates on Cotton to Gulf Ports, 100 I. C. C. 159.* In this first opinion the Commission found that the application of the domestic rates to the facilities located on the water-front was not illegal. It also found that the application of a higher rate on export than on domestic commerce to this same water-front resulted in undue preference and discrimination. Effective October 12, 1925, the Commission issued the following order:

> "It is ordered, that the respondents in No. 14940 and above named defendants be, and they are hereby notified and required to cease and desist, on or before October 12, 1925, and thereafter to abstain, from practicing the undue prejudice and preference found in said report to exist." (R. 52-53).

It is to be noted that the only requirement of this order was that the carriers should remove the undue prejudice and preference thus found to exist.

The discrimination found to exist in the report and to which the order necessarily related, is stated by the Commission, 100 I. C. C. 159, at page 166 (R. 49), and is as follows:

> "We are of opinion that the present adjustment of rates on cotton from Oklahoma, Arkansas, Texas and Louisiana to the Texas Gulf ports is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses, and that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge, which at Galveston is 2 cents and at Houston 1.5 cents."

This is the only discrimination or unlawful preference found by the Commission to exist and it related

only to freight rates and did not in any way include allowances, privileges or practices. The order, therefore, requiring the prejudice and preference to be removed related only to freight rates.

Thereafter elaborate petitions were filed for reopening and reconsideration. One of such petitions was filed by the appellants and was dated October 24, 1925. This petition sought reopening and reconsideration by the Commission on the following grounds:

1. That conditions had changed subsequent to the Commission's order referred to above.

2. That the Commission had misunderstood the facts as developed in the previous record.

3. That the privileges and practices in connection with cotton concentrated at interior points and moving to the waterfront resulted in an unjust discrimination against the waterfront facilities.

It is to be noted that in this petition the appellants herein did not ask the Commission to investigate the reasonableness of the rates *per se*, although such appellants were confronted with the Commission's order of October 12, 1925, requiring the discrimination to be removed.

The carriers also filed several petitions with the Commission, one of which was presented by A. C. Fonda for the Texas carriers. The general purpose of those petitions was to secure a reopening of *Docket 14940* and/or postponement and/or modification of the

Commission's order in *Docket 11965*, 77 I. C. C. 388. The point we desire to emphasize particularly in connection with the petitions filed by the carriers is the fact that they sought postponement of the Commission's order on the ground that they were not able to obtain authority from the Texas Commission to bring about the equalization in a manner satisfactory to the carriers. In the petition filed by the Texas carriers it is stated:

> "Furthermore, a revision of the intrastate rates between Texas points so there shall be no disparity between such rates and the interstate domestic rates to the ports, is essential to fully accomplish the desired adjustment. The application which carriers have filed with the Railroad Commission of Texas has been denied without a hearing at which it might be determined whether the proposed rates or some modification thereof should be established."

The disagreement between the Texas Commission and the carriers was a very natural consequence of the situation. It was the position of the carriers that the domestic rate should be increased to practically the level of the export rate, whereas, the Texas Commission held to the view that the export rate ought to be reduced to substantially the level of the domestic rates.

The other southwestern carriers sought reopening on the ground that they were unable to comply with the Commission's order in *Docket 14940* without violating

the order in *Docket 11965*. Thereafter, on the 28th day of December, 1925, the Commission reopened the matter for rehearing and further consideration (R. 54-55). The Commission ordered the case reopened for the purpose of investigating the following matters:

1. To develop facts and conditions not shown of record at the first hearing.

2. To determine if changes had taken place which would warrant any modification of the previous order.

3. To determine what rates should be established to comply with the Commission's order of June 23, 1925. (R. 52-53).

4. To determine whether or not interior practices and services resulted in favor of the interior and to the prejudice of the port concentrators.

5. Whether or not the findings in the original report should be extended to include ports other than the Texas ports.

After extended further hearings upon these questions the Commission rendered its second opinion in this cause and it is reported 123 I. C. C. 685.

The Commission in disposing of Questions No. 1 and 2 above, used the following language at page 690 (R. 61), *123 I. C. C.*:

> "Careful consideration of the situation as developed upon the whole record convinces us of the correctness of our former findings that the exist-

ing adjustment of interstate rates on cotton to the Texas ports, from the states covered by the proceeding, gives to the water-front warehouses and compresses, and shippers using such facilities, an unnatural and unlawful disadvantage to their undue prejudice."

The Commission disposed of Question No. 3 above at page 695 of its opinion in *123 I. C. C.* (R. 64-67), by fixing the exact rate necessary to remove the preference.

The Commission disposed of No. 4 above by finding that the privileges and practices at interior points did not result in undue preference or discrimination.

The Commission disposed of No. 5 by including New Orleans in the terms of its order, and, under date of April 4, 1927, issued its final order, which is contained in full at Record 80-81. The following are the pertinent provisions of that final order:

1. The carriers were required to cease and desist, and thereafter to abstain from practicing the undue prejudice and preference found to exist.

2. The order in *Docket 11965* was modified to the extent necessary to permit the readjustment of the rates in the manner indicated in said report for the purpose of securing compliance with the order.

3. The domestic and export rates were to be readjusted in such a manner as to bring about a removal

of the discrimination, prejudice, and preference found to exist. The specific character of that readjustment of the rates was set out in the Commission's opinion.

That portion of the opinion in which the Commission prescribed the manner in which the rates should be readjusted is found at page 695 of 123 I. C. C. and is set forth at page 66 and 67 of the record. Briefly, it required an advance of 1 cent per 100 pounds in the city-delivery domestic rates and a 2-cent reduction per 100 pounds in the shipside export rates. It should be observed that both the original order of the Commission, dated June 23, 1925 (R. 52-53), and the final order, dated April 4, 1927 (R. 80-81), required the removal of the preference found in the report to exist, and also prescribed the exact rate necessary to remove that preference. Certainly, the order cannot be broader than the discrimination and preference which the Commission found in its report to exist. The discrimination and preference which the Commission found to exist resulted from the rates, and the only discrimination and preference affected by the order is that resulting from the application of the domestic and export rates. No practices, no privileges, no allowances, —nothing other than the rates themselves, were included within the scope of the Commission's order.

That order was attacked in the courts below by the appellants herein and by the defendant carriers. The appellants' attack upon the validity of the Commission's order was based upon the following contentions:

1. That the order of the Commission was made without evidence, and was therefore arbitrary and void.

2. That, if supported by evidence, the Commission nevertheless made an error of law, because the Commission's order deprived the waterfront facilities of the advantage of their locality.

3. That the Commission's order was invalid because it undertook to increase rates applicable to water-front facilities without an investigation of the reasonableness *per se* of the rates under attack; that, regardless of the reasonableness of the rates under Section 1 of the Act, there was no evidence of record before the Commission upon which to base a finding as to what would be a reasonable rate.

4. That the Commission arbitrarily approved an allowance for the cost to the back-from-the-water-front facilities of getting their cotton to shipside, and denied a similar allowance to others similarly situated. (R. 3-35).

The carriers in the court below sought to attack the Commission's order upon the following grounds:

1. That the Commission had previously found reasonable the rates which they now undertook to reduce in this case in order to remove prejudice and preference.

2. That the Commission only had the power to order the preference removed and did not have the power

and jurisdiction to fix the exact rate necessary to remove the preference.

3. That the Commission has the power to fix rates only in a proceeding involving reasonableness *per se* under Section 1.

4. That, regardless of the issue of reasonableness, there was no evidence upon which to base a finding as to the specific amount of the rate.

5. That the Commission's finding and order of undue preference and discrimination was arbitrary and not supported by evidence.

6. That the manner and method prescribed by the Commission for removing the discrimination and preference was confiscatory and violative of the carriers' constitutional rights.

These contentions with regard to the validity of the Commission's order were presented to the three-judge statutory court comprised of Honorable Rufus E. Foster, Circuit Judge, Honorable Joseph C. Hutcheson, Jr., and Honorable Louis H. Burns (now deceased), District Judges. At the time of the oral presentation of the matter, much confusion was created by the plaintiffs' (appellants here) effort to entangle the facts with regard to the allowances made with the respective services performed for the various cotton concentrators. Consequently, the Honorable Judges granted an interlocutory injunction, in order that they might give the question proper consideration and investigate the rec-

ord before the Commission. The interlocutory injunction was granted July 13, 1927. After an extended investigation and mature consideration, the three-judge court unanimously recalled the interlocutory order, and vacated and dissolved the stay granted thereby, effective December 2, 1927, and dismissed the bill for want of equity. The opinion of the three-judge court appears at Record 131-141.

The carriers, subsequent to the decision of the court below, abandoned their attack on the Commission's order. (R. 157-159).

This case, therefore, is before this Court upon the issues raised by the appellant shippers and warehouse companies. From the brief filed by these appellants we briefly summarize the basis of their attack as follows:

1. That the Commission's order is unsupported by evidence and is, therefore, arbitrary.

2. That the Commission has no authority to fix a rate for the purpose of removing discrimination, but can only fix rates under Section 1 of the Act after an investigation of their reasonableness *per se*.

3. That the Commission approved allowances for the appellees and denied allowances to appellants.

4. That the Commission's order was invalid, because it sought to equalize commercial conditions.

We have found it convenient to reply to appellants' contentions under the following headings:

1. The Commission's order removing the discrimination and fixing the rate necessary to remove it is amply sustained by the evidence of record.

2. The Commission has power, authority and jurisdiction to require the removal of a discrimination and prejudice by fixing the specific rate necessary to remove it.

3. The Commission's order relates in no way to allowances made by the carrier to anyone. The question involved as to allowances is a matter of tariff interpretation.

4. The Commission's order is not based upon commercial conditions and does not deprive the appellants of any transportation advantage resulting from the location of appellants' facilities. The sole effect of the Commission's order is to require the removal of an unjust preference and advantage.

ARGUMENT

I

The Commission's order removing the discrimination and fixing the rate necessary to remove it is amply sustained by the evidence of record.

In considering the evidence upon which the Commission based its finding and order of discrimination and preference, the various questions involved will be dealt with in the following order:

1. The discrimination as between interior concentrators and port concentrators at shipside.

2. The discrimination between port concentrators at the water-front and port concentrators back of the water-front.

Taking up the first discrimination and preference found to exist between interior concentrators and water-front port concentrators, the Commission's finding was that the dual-rate system resulted in preference and advantage to the water-front port concentrators and a corresponding disadvantage to interior concentrators. In dealing with this question, we would respectfully request the attention of the Court to the very excellent description of the nature of the cotton traffic found at pages 6 and 7 of the appellants' brief. Appellants have there outlined accurately and adequately the circumstances attending the marketing

of the cotton crop. Appellants' discussion reveals the necessity of concentrating the small lots of different grades and composition into large lots of uniform grades and composition, in order that the requirements of the spinning mills may be met. Both the interior concentrator and the water-front concentrator must accomplish that object, and the only difference between their respective problems lies in the fact that one concentrates his cotton in the interior, at or near the source of production, whereas, the other gathers his purchases together and prepares his cotton for merchandizing at the end of the rail transportation prior to delivery to the water lines.

Appellants state, at pages 6 and 7 of their brief, that the cotton originates with the producer in small lots, and that it is seldom practicable at the purchasing point to obtain a sufficient volume of cotton to market direct shipments; that it is usual to assemble the cotton at concentration points, both at interior and at the ports. In connection with the business of appellants, that concentration is accomplished at the water-front facility at the ports. We call attention, furthermore, to the fact that where the cotton moves out of the concentration point, whether in the interior or at the port, it moves out in large lots of even-running grade and staple. The important fact is that the cotton moves into the concentration point in small lots and out in large lots. It is obvious, therefore, that the movement inbound into the water-front facility, for the total distance of the rail transportation to the

water-front, is in small lots, whereas, in connection with interior concentration, the movement of the small lots is for short distances to the interior concentrating points, and thence for the long distance by rail to the water-front in larger shipping lots.

The importance of this fact is apparent from the statement, at page 3 of appellants' brief, to the effect that "the rates apply to shipments of cotton in any quantity and therefore include the obligation of unloading; in general, however, this is discharged by an allowance to the shipper". In other words, the rates are applicable to cotton, regardless of the quantity shipped in any one given car, and the large lot of the interior concentrator moving in one car to the water-front would be charged the same rate as the small lot of the port concentrator moving to the water-front facility for concentration. This fact is most important in connection with the evidence before the Commission as to transportation characteristics attending the movement of export cotton from an interior concentrating point to the water-front, as compared with a domestic movement to the water front.

There is no allowance made to an interior concentrator of any kind. He does not receive any drayage allowance or unloading allowance. The cotton moving on a through export bill of lading or on a bill of lading marked for export can only be interior concentrated cotton. This cotton is tendered to the carrier in carload lots and moves direct to the shipside wharves by railroad and the carriers make no allowances such as are

involved in connection with the cotton concentrated at the up-town facilities at the ports and in connection with 70 per cent of the cotton concentrated at the waterfront facilities.

As to the transportation service involved on cotton concentrated at the interior point moving to the water-front and cotton moving to the water-front for concentration, respectively, we point to the testimony of Witness Pecot (R. 620-22) and the Exhibits A-104 and A-105 filed by that witness (see pages 160 and 161 of original exhibits). It will be observed that the shipment of the small lots moving from points of production to the interior concentrating points show an average loading of 27 bales per car, whereas, the movement of compressed-in-transit cotton outbound from the interior compress point shows an average loading per car of 63 bales. Those exhibits show, further, that the movements outbound of concentrated cotton from interior concentration points maintains an average loading of 72 bales per car. Bearing in mind the fact that cotton moves at the same rate per 100 pounds, whether the individual shipment consists of 1 bale or 100 bales, it is to be observed that a shipper forwarding 72 bales per car from the interior concentrating point is demanding less service of the carrier than a shipper forwarding 63 bales per car outbound from the interior compress point or a shipper forwarding 27 bales per car outbound from an interior point. Although it was shown in the record that there is a substantial movement of flat, or uncompressed cotton to the water-front facility for concentration (R. 804-805) with an average

loading of 27 bales per car, the record nevertheless shows that the large volume of movement to the water-front for concentration is compressed-in-transit cotton, which moves in the following manner: The small lots of cotton, as they come to the carrier from the producer, are assembled by the carrier at the nearest compress point, there compressed in transit and forwarded to destination as compressed cotton. This is the character of cotton which moves in the largest volume to the water-front facility. Interior concentrated cotton, on the other hand, moves in small lots to the interior concentrating point, which is usually also the point at which the carrier has the service of compression performed, is there concentrated into large lots and forwarded direct to the water-front.

It should be observed, first, that the average loading per car of interior concentrated cotton is 9 bales, or 4500 pounds, greater than that of compressed-in-transit cotton and nearly three times the average of the flat cotton; second, that, in 89.5 per cent of the instances, the interior concentrated cotton moves direct to the wharves, or to the delivering points at the ports, without rehandling by the carrier at the ports, and that only 10.5 percent of the interior concentrated cotton is rehandled at the ports; third, that of the transit cotton, which is the character of cotton moving to the facilities of appellants, 43.5 percent is rehandled at the mixed platform at the ports and only 56.5 percent goes direct to the water-front or direct to the consignee located at other points at the port.

The rehandling at the mixed platform is described by the Witness Pecot (R. 620-22) and by Witness E. A. O'Donnell (R. 851-53). The testimony of those witnesses shows that the mixed platform handling involves materially greater services and greater costs than is the case in connection with the handling of cotton direct to the consignee. The interior concentrator, therefore, by reason of the fact that he has collected his cotton into larger lots, is enabled to move it direct to the water-front, without rehandling at the port, whereas, the water-front concentrator, as well as other port concentrators moving their cotton in small lots to the water-front, necessarily requires the carrier to rehandle the cotton at the port, in order to sort the contents of each individual car and separate the small shipments billed to various consignees. In other words, the movement from interior-concentration points to the ports is almost uniformly in carload lots, whereas, the shipments to port concentrators, such as appellants, to the extent of 43.5 percent of the cotton so handled, must be switched to the mixed platform, unloaded, sorted among the various consignees, and thereafter reloaded into other cars for switching to the facilities of such consignees.

This final switching to the water-front, in addition to all of the other services of transporting the cotton to the mixed platform, unloading, assorting, and reloading, should be compared with the services rendered in connection with interior concentrated cotton loading on the average 72 bales to the car, 9 bales in excess of the

average on transit cotton, and moving direct to the water-front without rehandling in 89.5 percent of the instances.

Proceeding from this stage in the transportation of these two classes of shipments, we respectfully request the attention of the Court to Exhibit A-33 filed before the Commission, now before this Court in its original form, and reproduced herein as Appendix "B". This Exhibit is a floor plan of the warehouse of the Houston Compress Company. The warehouse itself is located on the ship channel. Track No. 1, as shown on the exhibit, is the track serving the water-front berths 1, 2, 3, and 4. Track No. 2 and Track No. 3 serve the back of the warehouse. It is 90 feet from Track 1 to the warehouse, 150 feet from Track 1 to the south wall of the warehouse, 67 feet from the south wall of the warehouse to Track No. 2, and 68 feet from Track No. 2 to Track No. 3. A car of cotton concentrated at an interior point moving to the water front on a through export bill of lading would ordinarily be delivered to the water front on Track No. 1, although it is sometimes delivered to the water-front on Tracks 2 and 3 (R. 527). Cotton moving to the water-front for concentration is ordinarily delivered on Track No. 2, although it is sometimes delivered to the warehouse on all three tracks. (R. 526-27).

Bearing in mind the service performed by the carrier as described above in connection with interior concentrated cotton, as compared with cotton concentrated at the warehouse shown in Appendix "B", we desire to re-

quest the attention of the Court to the finding of the Commission with regard to the character of the rates collected on these two classes of shipments. The Commission found that, in every instance in which interior concentrated cotton moved on a through export bill of lading or on a bill of lading marked for export, the carriers collected a rate which was from 3 to 3.5 cents per 100 pounds higher than the rate collected on cotton concentrated at the water-front. Interior concentrated cotton moving on a through export bill of lading or on a bill of lading marked for export would terminate its rail transportation on Tracks 1, 2, and 3 of Appendix "B". In a like manner the cotton moving to the water-front warehouse depicted on Appendix "B" would be delivered on Tracks 1, 2, and 3. It is apparent, therefore, that in connection with the domestic rates and the domestic services a greater service was performed and a lower rate collected than was the case in connection with the through or export movement.

In connection with the through bill of lading cotton, which is frequently delivered to shipside on the same track as the domestic cotton is delivered to water-front facilities, the record shows that the carriers' cost of unloading the through bill of lading cotton and placing it in the ship's berth is less than the cost assumed by the carriers in connection with the unloading of domestic commerce into the water-front facility for the water-front concentrators (R. 678). The testimony of the respondent carriers in connection with this matter is to the same effect, and Witness S. G. Reed testified before the Commission as follows:

> "On a domestic bill of lading where the 80 cents rate should apply going to a shipside facility, we would absorb 1 cent per 100 pounds at Houston for unloading. We can have the unloading performed for 4 cents (per bale) on export traffic. We pay 5½ cents on one and 4 cents on the other at Houston, but it is not identical service." (R. 834-5).

The services are not identical because the unloading for 4 cents per bale includes the placing of the cotton in the ship's berth, whereas the 5½ cents per bale covers only the unloading of the cotton moving on a domestic bill of lading. Upon these facts the Commission found in *123 I. C. C.*, at page 702, that (R. 75) "concentration in transit, like compression in transit, unquestionably reduces rather than increases the carriers' expenses of transportation".

At page 29 of their brief filed with this Court, appellants concede the correctness of that finding. They contend, however, that these facts, should have received no consideration at the hands of the Commission and assert that the relative transportation costs of export versus domestic commerce should be determined by considering only the following matters:

1. Car detention on export, as compared with domestic, commerce.

2. The value of the service to the shipper on export, as compared with domestic, commerce.

3. The expedited service on export, as compared with domestic, commerce.

4. The incidental service involved in connection with the issuance of through export bills of lading.

In dealing with the position thus assumed by appellants, we would first request attention to the direct contradiction between two of the contentions here urged by appellants. Appellants assert that the carriers' transportation costs are increased by car detention, and yet urge as one of the advantages under the export billing the expedited service alleged to be necessary in connection with the export movement. Certainly, if it is necessary to rush forward the traffic of the interior concentrator, in order that it may be loaded on a particular ship, it can scarcely be said that such a movement involves the detention of the carriers' equipment.

Taking up specifically the first contention of appellants as set out above, namely, that the difference between the export and domestic rates is to be justified by reference to the cost of car detention. We desire to request the attention of the Court to the fact that cost to the carrier for the length of time a particular car may be detained necessarily varies with the volume of cotton loaded in that car. As pointed out above herein, the average loading of the interior concentrated cotton was shown to be 72 bales per car. Cotton concentrated at the water-front and compressed in transit was shown to have loaded 63 bales to the car. Cotton moving to the water-front flat, or uncompressed is shown to have loaded 27 bales per car. It is obvious that the carriers' cost per 100 pounds of cotton for car detention would vary in each of these instances. It would be less in

connection with the interior concentrated cotton than in the case of transit cotton concentrated at the water front or cotton moved to the port flat, or uncompressed. That would be true, even if it were true that the cars transporting interior concentrated cotton in export commerce were in fact detained for periods in excess of the detention on domestic commerce. The facts are, however, as shown by Exhibits 186 and 187, that the average detention of cars handling export commerce is not materially in excess of the detention permitted in connection with the cars handling domestic commerce. Exhibits 186 and 187 (R. 224-230) show that, for the year ending July 31, 1925, the average detention on through-bill-of-lading cotton at Galveston was 3.47 days and the average detention of cotton moving on local bills at the export rate 2.94 days. For 1924, the average detention for through-bill-of-lading cotton was 3.34 days and for 1925, 2.09. At Houston, for the year ending July 31, 1925, the average detention on through-bill-of-lading cotton was 2.38 days. The average detention on cotton moving under local bills of lading marked for export is shown as 1.88 days.

The free time allowed in connection with domestic commerce has been correctly stated by appellants as being 2 days. It is obvious, therefore, that the Commission had evidence before it upon which to determine whether or not the factor of car detention increases the carriers' expense in connection with export commerce sufficiently to justify a higher rate on export commerce than that applied in connection with domestic

commerce. Furthermore, the question of car detention and demurage is a matter within the control of the carrier, because the commerce in question is any-quantity traffic, the obligation to unload the car resting upon the carriers. (Page 3, Appellants' brief). But, even if it were not shown that the obligation to unload rests upon the carriers, and even if it were not true the question of car detention on through traffic is a question solely between the rail carriers and water carriers, the evidence before the Commission established conclusively that there was no undue detention of the equipment in transporting export and foreign commerce. In addition to this fact, the cost of that detention, because of the substantially heavier average loading of interior-concentrated cotton, is materially less on each bale, or on each 100 pounds, of that character of cotton. When we consider also the relatively greater expense involved in connection with the port concentrated cotton as a result of the rehandling at the mixed platforms, which has been shown to be necessary in connection with that character of shipment, it is apparent that the actual transportation costs on interior-concentrated cotton, instead of being greater, must be materially less than such cost on cotton concentrated at the ports.

Taking up now the question of the relative value of the service to the shippers, the second question raised by appellants, as we have analyzed their contentions above, we find that appellants take the position that, although the transportation service may be less, and consequently the carrier's transportation costs may be less, in con-

nection with export commerce, the commercial value realized by the shipper from the transportation of interior-concentrated cotton is greater than that realized from the transportation of cotton concentrated at the ports, and that that alleged greater commercial value should be availed of as a justification for exacting a greater charge from the interior shipper.

We know of no instance in which freight rates have been constructed, and no instance in which discrimination has been justified, upon such a basis, in a case in which only one commodity, all units of which obviously have the same value, is involved. The question of discrimination and preference, in all the cases which have been decided, either by the courts or by the rate-making bodies, under Anglo-American law, so far as we have been able to determine, has always been determined by reference to the respective transportation services received. The value of the service to the shipper is determined by the value of the commodity for the purpose of fixing reasonable rates. *Interstate Commerce Commission vs. Delaware, Lackawanna & Western, 64 Fed. 723; Minneapolis & St. Louis R. R. vs. State of Minnesota, 186 U. S. 257, 22 Sup. Ct. 900.* The value of the commodity involved in this case is obviously the same, because it is the same commodity going to each of the respective parties. Aside from that fact, however, the record shows that it is not true that any greater value results to the shipper of export commerce than to the shipper of domestic commerce from the transportation services accorded by the carriers. On the contrary, the undisputed testimony (R. 697-698)

shows that if any difference exists between the relative value of the carriers' services in the transportation of the two classes of cotton here involved, the shipper utilizing the through bill of lading and the export bill of lading receives less actual commercial value from the services of the carrier than the shipper on the domestic bill of lading.

In regard to the third proposition urged by appellants in attempted extenuation of the discrimination denounced by the Commission, namely, the question of expedited service, we desire to say that there is not one word of evidence in the record before the Commission showing that any interior concentrator or shipper of export commerce has in fact demanded, or received, any expedited service in connection with the handling of his cotton which has not been accorded by the carriers in the same manner, and to the same degree, to the shippers on domestic bill of lading who concentrate at the ports. Appellants themselves assert, at page 3 of their brief, that the line haul under export rates is indistinguishable from that performed by the carriers under local rates. Such being the fact, it is obvious that the expediting of the shipment through the terminals at the port is accomplished, if at all, at the instance of the carrier, and results in benefit, rather than detriment, to the carrier. Such being the case, it can scarcely be urged here as justification for a discriminatory and excessive charge assessed against one particular character of commerce.

Passing to the fourth and last contention of appel-

lants listed above, namely, that greater services are rendered in connection with the issuance of through export bills of lading than in connection with the issuance of domestic bills of lading, we assert that the testimony in the record before the Commission is conclusive to the effect that the issuance of such through export bills of lading, far from entailing extra service or, expense on behalf of the carriers, actually result in economy and benefit to them. In this connection we respectfully request the attention of the Court to the narrative of the testimony of Witness Griffin, copied from page 691-2 of the transcript of the record:

> "In reality the issuance of a through bill of lading is of benefit to the carriers for the reason that at the ports the carriers do not effect delivery of the shipment in or on their own terminals, but cars are delivered at the ports to wharf or terminal companies which effect the delivery to the ships and thereby prevent an accumulation of cars in the carriers' yards at the ports."

Finally, in connection with this question, we would request attention to the testimony of witness O. J. Brown, Terminal Superintendent for the railroads at Houston. Referring to Exhibit A-33, reproduced herein as Appendix "B", that witness stated that, "in the physical handling of cotton within the terminals at Houston, within the switching limits of Houston, there is no difference between the cost to the carrier of handling through-bill-of-lading, or ships' cotton to that facility shown on Exhibit A-33 (Appendix "B") and

the cost to the carrier of handling local delivery cotton to that facility". (R. 526).

The record shows, therefore, by the overwhelming preponderance of the evidence that the transportation services performed, and the transportation costs incurred, in connection with export and foreign commerce moving on a through bill of lading from an interior concentration point are materially less than the services rendered in connection with cotton moving on a domestic bill of lading to the water-front facilities.

The record as to the other phases of the discrimination against export commerce is equally conclusive. It shows that the interior concentrators are in active competition with the water-front concentrators for the sale of the producers' cotton in export commerce. It shows that the difference of 3 cents per 100 pounds in favor of the water-front concentrator constituted an advantage sufficient to enable the water-front concentrator to under-bid the interior concentrator for the export business, and, therefore, to deprive the latter of that business. As representative of that evidence, we would refer to the testimony of the following witnesses: Witness Neale (R. 652; Witness Bennett (R. 727); Witness Steel (R. 207); Witness Westbrook (R. 211); Witness Harris (R. 213); Witness Reed (R. 217); Witness Tiedeman (R. 220); Witness Toombs (R. 222); Witness Kempner (R. 230); Witness Eggers (R. 234); Witness Knowles (R. 235); and Witness Nowlin (R. 236). In addition to this general testimony dealing with competition and the effect of the adjustment of

the rates upon that competition, we have the specific testimony of Witness Drewey (R. 646), showing an actual loss in business by the interior concentrators. In addition thereto, the record contains exhibits showing the exact loss sustained by the interior concentrators subsequent to the effective date of the two-rate plan in 1917, and the construction of water-front facilities which was in 1923. From Exhibits A-136 (R. 183-197) we have compiled the following table:

RECORDS OF 10 COMPRESSES AT 10 TEXAS CITIES

Year	BALES HANDLED				RATIO TO TOTAL		
	Railroad Transit	Railroad Concentrated	City or Wagon	Total	Railroad Transit	Railroad Concentrated	City or Wagon
1	2	3	4	5	6	7	8
1913-14	41,254	326,795	89,409	457,447	9.0	71.4	19.6
1914-15	45,935	424,521	124,519	594,975	7.7	71.4	20.9
1915-16	39,549	318,588	100,452	458,589	8.8	68.5	22.7
1916-17	59,376	398,887	130,785	589,048	9.9	67.7	22.4
1917-18	72,576	393,544	107,737	573,857	12.6	68.6	18.8
1918-19	45,111	330,227	97,160	472,498	9.5	67.7	22.8
1919-20	68,140	344,414	90,107	502,661	13.6	68.5	17.9
1920-21	100,898	353,354	138,679	592,931	17.1	60.1	22.8
1921-22	70,002	213,019	89,775	372,796	18.8	57.1	24.1
1922-23	106,430	211,937	84,835	403,202	26.4	52.5	21.1
1923-24	151,001	246,609	102,738	500,348	30.2	49.7	20.1
1924-25	295,410	232,144	95,645	623,199	47.4	37.3	15.3

It should be noted that, with the construction of water-front facilities which began operation in 1923, the volume of interior concentrated cotton, which is listed above as railroad concentrated cotton, immediately

began to decline and that the volume of railroad transit cotton, which is the cotton handled by the appellants, immediately increased. For instance, in 1914, the year when the total volume of cotton handled was 457,447 bales, 326,795 bales were concentrated at interior points. In 1924-25 the total volume was 623,199 bales, an increase of over 200,000 bales in the total handled over 1914, but the interior concentrated business had dropped from 326,000 bales to 232,000 bales. The court below, in reviewing the foregoing facts, stated that it had no difficulty in sustaining the Commission's power to find that a condition of undue prejudice resulted from the two-rate plan. They concluded, therefore, that the order of the Commission, based on that finding, insofar as it directed the removal of that discrimination was a reasonable and proper exercise of the Commission's jurisdiction and afforded the plaintiffs below no ground for equitable relief.

We most respectfully submit, therefore, that as to the first proposition set out above, namely, the matter of discrimination as between the interior concentrators and port concentrators at shipside, there can be no question that the Commission had before it facts of record amply sufficient to establish clearly and positively the relative character of the transportation services rendered in connection with both characters of traffic, namely, that of interior concentrated cotton moving on a through bill of lading or an export bill of lading, as compared with the movement of domestic commerce on a domestic bill of lading.

Passing now to the second character of discrimination referred to above, the discrimination and preference found to exist in connection with the movement of commerce to shipside concentrators, as compared with back-of-the-water-front or up-town, concentrators at the port, we would respectfully request the attention of the Court to the facts established by the evidence with regard to that question.

In dealing with this phase of the discrimination found to result from the two-rate system, no serious question can be raised with reference to the matter of car detention. It is true that the carriers' tariffs obligate them to perform the service of delivery to the shipside after concentration at an up-town, or back-of-the-water-front, concentration point; but, as will be hereinafter shown, the carrier makes an allowance to the shipper to cover the performance of this service, in lieu of performing the service itself. That allowance is a substitute for rail service, and is made to cover the cost of drayage performed by the shipper. The question involved as to the services rendered the two concentrators, up-town and water-front, is therefore to be determined by a comparison between the service performed for the water-front facility in transporting the cotton direct to the water-front, on the one hand, and the inbound service to the up-town facility, plus the allowance in lieu of the transportation service the carrier is obligated to perform from the up-town facility to the water-front, on the other hand. The up-town concentrator brings cotton into its facility, concentrates it and thereafter drays it to the water-front or to shipside.

The carrier makes an allowance to cover the cost of the drayage. The water-front concentrator brings the cotton in from interior points and the carrier transports it direct to the water-front. The carriers switch the direct movements to the water-front facility through their congested terminals, and have contended in this record that the actual cost of switching approximates the cost of drayage. (R. 819). Witness Drake for the carriers testified as to some of the additional costs of switching to the water-front, as compared with delivery to an up-town warehouse. (R. 844-851). If the carriers incur additional costs in moving the traffic from an up-town location to the water-front, it necessarily follows that such costs are encountered regardless of whether the movement is direct to the water-front or whether it takes place after concentration at an up-town facility.

In connection with the matter, appellants have correctly stated that there is no material difference in the line-haul movement to the ports. The services up to the break-up yards, symbol (5), Appendix "A", obviously must be the same on both classes of traffic, because both the back-of-the-water-front concentrators located at symbols (F), (G), (H), etc., and the water-front concentrators located at symbol (P), Appendix "A", move flat, or uncompressed, cotton, loading 27 bales to the car, and compressed-in-transit cotton, loading 63 bales to the car, into their respective plants. It is also true that both water-front and up-town concentrators purchase cotton at interior points which has been pre-

viously concentrated at such interior points and, therefore, moves in domestic commerce as interior-concentrated cotton, which is the same character of cotton as that moving on a through bill of lading or on an export bill of lading to the water-front. When cotton previously concentrated at interior points is purchased by port concentrators, it moves to the port concentrator, usually in mixed cars with compressed-in-transit cotton, and, therefore, would receive the service of rehandling at the mixed platform at the ports to the same extent as compressed-in-transit and uncompressed cotton.

As previously stated, however, the line-haul service for both water-front concentrator and up-town concentrator up to symbol (5), Appendix "B", must necessarily be the same. The question remains, therefore, as to whether or not the Commission had before it evidence as to the transportation service rendered by the carriers in connection with movements through up-town concentration points (symbols (F), (G), (H), etc., on Appendix "A") to the water-front, as compared with the direct movement of the same character of commerce to the water-front. We assert that the Commission had before it ample evidence as to the relative services performed in connection with such movements. The respective operations of the up-town concentrators and water-front concentrators may be briefly described as follows: Both concentrators purchase cotton in small lots as it comes from the producer and move it flat, at an average loading of 27 bales per car, or compressed-in-transit, at an average loading of 63 bales per car, to

their respective facilities. The cotton is there merchandized and assorted into even running grades, character, and staple, so as to be suitable for the consuming mills in Europe. After concentration, it is forwarded in large shipping lots to the spinning mills. In the case of the up-town concentrator located generally in the vicinity of (F), (G), (H), (K), etc., there is an outbound movement to the water-front located between symbols (7) and (8), Appendix "A". Under the carriers' tariffs, effective at the time these hearings were held, and which are still effective, the carriers were required, under the export rates, to perform the complete transportation to water-front. The domestic rates, in the same way, required delivery upon the wharves at the waterfront where the movement was upon local or domestic bill of lading. (R. 244). Therefore, in the case of the up-town facilities, additional rail transportation was necessary after concentration. In the case of the water-front facilities, on the other hand, the carrier had already performed that service by moving the small lots of cotton through the terminal to the water-front facility.

It is also true that the water-front facilities, for instance, the ones located at symbol (V) or symbol (P), have the privilege under these existing tariffs of concentrating and moving cotton by rail from their facilities where rail transportation is necessary to reach shipside. The record shows that 70 percent of the cotton handled by such water-front facilities is reforwarded by rail (R. 296). In other words, only 30 percent is actually delivered direct to the ship at the water-

front facility. It is obvious that, as to 70 per cent of the traffic moving through the water-front facilities, such facilities and concentrators would receive more service inbound than would the up-town concentrators and facilities, and in addition thereto would receive the same outbound service to the shipside as the up-town facilities. The testimony also shows conclusively that the services performed in connection with the 30 per cent of the traffic moving through the water-front facilities which is in fact delivered direct to the ship are substantially the same as the services performed in connection with the movement to shipside through the up-town facilities. We respectfully request the attention of the Court to the testimony of Witness Griffin, beginning at the bottom of page 676 of the record and extending through to page 679. For convenience we quote.

> "In Houston and Galveston there are less switch moves and less transportation services made in making delivery to warehouses back from the water front than in making delivery to plants at Houston located on the water front that can effect shipside delivery. As example, we are taking three cars arriving in the same train, first car containing (fol. 648) cotton from the interior direct to shipside, at Long Reach, (appendix "B") second car containing cotton from the interior for local delivery to the Houston Compress Company's Long Reach plant, and third car containing cotton for local delivery to the Southern Compress & Warehouse Co., back from the water front. These plants are each located on the International-Great

Northern Railway, and the switching and delivery is performed by that same railway. I had Exhibit No. A-121 (Appendix "A") prepared, and from my knowledge of the Houston Terminal situation, it is approximately correct (R. 3289). On arrival at Houston, the train would be stopped in the I-GN North Yard, symbol 5 Exhibit A-121, where it would be broken up and the cars classified. The same three cars would be brought together from the I-GN North Yard to their Congress Street Yard, symbol 0, in which is located the plant of the Southern Compress & Warehouse Co. There the car for delivery to the Southern Compress & Warehouse Co. would be placed for unloading at the plant, which is located in the Congress Street Yard. The car for local delivery to the Houston Compress Co.'s Long Reach plant and the car for shipside delivery at the same Long Reach plant, would after re-classification, be taken by another engine from the Congress Street Yard, symbol 0, out to the I-GN Yard on the ship channel, known as Booth Yard, symbol 8, and would there be held until ordered placed for unloading. In other words, the movement would first be from Symbol No. 5 to Symbol 0, on Exhibit A-121, and at symbol 0, there would be another reclassification, and then there would be a movement similar to a line haul by the International-Great Northern from symbol 0, on Congress Street, about seven miles down to the ship channel, or whatever distance it happens to be, and the cars would again be placed in Booth Yard, symbol 8. That would be a switching movement for a distance of approximately not more than 5 miles, from symbol 0 to (R. 3290) symbol 8. Then it would be put into Booth Yard for reclassification again. That would

be a third classification of those cars. Then they would be classified and moved from Booth Yard into the Long Reach plant, symbol P, and placed for unloading. If there should happen to be any cars going to the Houston Terminal Railroad, which has connection with the I.-G.N., those cars would be placed on interchange track down at the ship channel, and the port terminal railroad would take those cars off to symbol 7 on Exhibit A (fol. 649) 121. There they would break them up again and place them in the switch, such as the Turning Basin Compress, a plant served by the Port Terminal (R. 3291) Railroad. The cars for shipside delivery and for local delivery at the Houston Compress & Warehouse Company. Long Reach plant, and at the Ship Channel Compress Co., symbol Q, Alexander Sprunt & Son, would be placed on immediately adjacent tracks for unloading. Alexander Sprunt is marked Symbol T on the legend, and the Q that is shown on the Channel here is the plant of Alexander Sprunt, therefore where it shows T, Alexander Sprunt & Son, that T should be erased and Q instead. A charge of 4c per bale, which is absorbed by the railroads out of the rate, is made by the Houston Compress Co. (Anderson Clayton & Co., operators), and the Ship Channel Compress Co. (Alexander Sprunt & Son, operators), for unloading the direct movement from the interior to shipside and for delivery to steamship agent at shipside of within the usual distance, 200 feet from ship's tackle. The cars containing local delivery cotton and shipside delivery switch movement cotton would be unloaded by the Houston Compress Co., or other shipside facility for account of the owner of the cotton, the latter at a charge of 4c per bale. Where the cotton

was unloaded by the Houston Compress Co. for the owner on local delivery cotton, the railroads would absorb 1c per 100 pounds unloading (R. 3293). In other words, on the domestic rate of 80c, the railroads absorb the same unloading allowance or a greater unloading allowance than they do on the through bill of lading traffic. This would go to the owner of the cotton. The compress facility would unload it for the owner and charge him for unloading it, and the owner would obtain 5-1/4c per bale from the carriers as an allowance for unloading. On the through bill of lading cotton, the carriers would absorb the cost of unloading, not to exceed 4c per bale.

"There would be two less switching moves and less service performed in placing the cotton at our plant back from the water front in the Congress Street Yard, and one less move in placing cotton at our plant back from the water front in the 5th Ward, than there would be in placing the cotton for local delivery at the Long Reach plant of the Houston Compress Co."

The testimony of the carriers showing the approximate additional cost of moving the cotton from the up-town yards to the water-front, in the first instance, as compared with making delivery to the up-town facility, confirms the testimony of Witness Griffin. Witness Drake for the carriers, testifying as to the relative costs, concluded his testimony on this subject as follows:

"Taking ten cars originating in the interior consigned to us upon a through bill of lading and

orginating on the international and great Northern, at Palestine, and taking ten cars consigned to the Houston Compress & Warehouse facility marked P on Exhibit A-121, on a local Texas domestic bill of lading, those 20 cars coming in on the International & Great Northern yard train, into the yard marked 5 on Exhibit A-121, there would be no difference in the service of handling those cars from Yard 5 down to the ship's channel (R. 3971), assuming that they arrive at Percival Yard in the same train. If 10 of them are going to (Fol. 849) the public dock for export, they would be placed on interchange tracks in that yard for the Port Terminal Railroad. The International & Great Northern would give it to us at about No. 8 on this map, (Appendix "A") and if it belonged to the Turning Basin we would take it over to North Yard No. 7 and classify it, but if for the public dock on the South side, we would place the whole 10 cars onto those tracks. *The 10 cars going to the Houston Compress Company would be ordered in a car at a time and by car number, or they might be ordered in all at one time* (Italics ours) (R. 3972), and that would involve additional cost and additional switching on the part of the International & Great Northern. It would be more costly than setting in the 10 cars to the public dock. If one car was consigned to the McFadden Plant via the Congress Street Yard, and the other ten are consigned to the Houston Compress Company on the ship channel, they would come in from Palestine in the Percival Yard, shown at Symbol 5 in Exhibit A-21, in the same train. The one car would be placed in a separate cut for the Congress Street yard. All of the cars would not be brought to Congress Street Yard for classification; they would make

the classification in Percival Yard. Only trains would pass through the Congress Street Yard (R. 3973), going to Booth Yard or the Long Reach Wharf. The others would be destined to Congress Street Yard, having in the train cars of the McFadden Warehouse and other industries in that section. There would be additional cost to the carriers in going to the Ship Channel over what it would cost to come down to the Congress Street Yard and place it. There would be a material cost. It would have to average $5.00 shown on Exhibit A-192 plus the cost of bringing it from the Congress Street Yard down to the Interchange point. That would be way and above what it would cost to bring the car down to Congress Street Yard, Symbol (O)". (Appendix "A") (R. 849-50).

The facts as to competition, loss of business, and injury sustained by up-town competitors of the water-front concentrators are to be found in the testimony, hereinbefore referred to, of witnesses Neale, Steele, Harris, Reed, Tiedeman, Toombs, and Kempner.

Summing up the facts with regard to the movement through an up-town facility to shipside and the movement direct to the water-front facility for direct delivery to shipside, the testimony shows conclusively that the services involved in the inbound movement to the up-town facility on the great bulk of the cotton are substantially less than those in connection with the inbound movement to the shipside facility, and that the total of services performed in accomplishing the inbound movement to the up-town facility and the out-

bound movement from that facility to the shipside are substantially the same as, and certainly not greater than, the services rendered in connection with the direct delivery of a domestic shipment to a shipside facility.

Upon the basis of a mass of testimony, of which that referred to above is only illustrative, the Commission made the following finding:

> "Considering now the question of whether our previous finding was correct that the undue preference and prejudice should be removed by a readjustment which will result in the ship-side rates becoming higher than the city-delivery rates by no more than the wharfage charges. There is little, if any, more service performed in delivering shipments at the wharves and piers under the ship-side rates than is performed in delivering shipments at the water-front warehouses or compresses at the city-delivery rates. For illustration, at the water-front plant of the Houston Compress Company the wharf parallels the water front and immediately back of and paralleling the wharf are warehouses. There is a switch track on and extending the entire length of the wharf. There are also switch tracks alongside the warehouses. Cotton shipped from an interior warehouse, or ordered switched from an uptown warehouse under transit, for ship-side delivery upon the wharf at this facility, would be charged ship-side rates. But upon similar cotton, originating perhaps at the same point and handled in substantially the same manner by the carriers, delivered upon the side tracks serving the adjacent warehouses, the lower

city-delivery rates would be applied. In both instances the carriers would assume the cost of unloading the cotton; in the one case from the car to the wharf and in the other from the car to the receiving platform of the warehouses. Those who are striving to have us reverse our previous finding that the rates, exclusive of wharfage charged, should be equalized, contend that the carriers are put to some greater (fol. 43-a) expense in connection with the shipments delivered at ship-side because of greater free time allowances and other minor incidental services. That question was discussed in our prior report and nothing developed upon further hearing or reargument convinces us that what we there said is unsound." (R. 61-62).

The three-judge court below, after a complete review of the testimony in the record relating to the many contentions of the appellants, and after mature deliberation upon all the facts before it, affirmed that finding of the Commission in the following language:

"In short, the Court was in agreement that the up-town and the water-front facilities should be charged the same rate, in the same switching limits. They were in doubt whether that was the effect of the order. They have, after the most careful review of the able briefs of counsel, reached the conclusion that the only question for consideration is the rate established. That if that rate is the same for all persons in the same territory, that is the end of the matter. That it cannot make any legal difference whether the carrier performs the service continuously or after a

stop for concentration allowed by its tariff, or makes allowance in lieu of, but only in lieu of transportation, and *that if attention is fixed upon the movement by the carrier, the difficulties of the case will disappear.* (Italics ours). That they arise out of, and only out of, a consideration of allowance in lieu of transportation.

"That this confusion can and should be avoided by disassociating the rate from the allowances and considering each upon its own merits. That it is time enough for a shipper to complain of an allowance or a disallowance when there has been an order on it, and that the present contention is purely academic and speculative. They believe that if the water-front warehouses can have cotton delivered to their own plant facilities by which they can put the cotton to shipside, it is no concern of theirs that an up-town warehouse gets its cotton to shipside at the same transportation cost. That the fact that the water-front warehouses have spent money to get their sites, and made expenditures upon intra-plant equipment is no matter to be considered in rates. That they are entitled to as good a rate as others situated in the same limits but that there is no reason why they should have better rates." (R. 138-139).

No where in appellants' brief do we find a challenge of the correctness of this finding by the court below.

This Honorable Court has never held it to be the law that illegal discrimination and preference cannot exist except in those instances where the transportation service is identical in all minor details. On the contrary,

this Court has consistently affirmed the principle that discrimination is a question of fact to be passed upon by the Commission and that if the Commission has considered the facts with regard to the matters involved, its conclusions upon such facts are necessarily conclusive.

In *Virginian Ry. vs. U. S., 272 U. S. 658*, this Honorable Court, speaking through Mr. Justice Brandeis, stated at page 663:

> "The Virginian attacks the Commission's finding of unjust discrimination. There clearly was substantial evidence to support every fact specifically found. To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province. Whether a rate is unjustly discriminatory is a question on which the finding of the Commission, supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law."

See also *Western Paper Makers Chemical Co. vs. U. S., 271 U. S. 268; Interstate Commerce Commission vs. A. T. & S. F., 234 U. S. 294; Chicago Illinois & Louisville Ry. Co. vs. U. S., 270 U. S. 287; Seaboard Airline Ry. Co. vs. U. S., 254 U. S. 57; Interstate Commerce Commission vs. B. & O., 225 U. S. 326.*

This Honorable Court has also held consistently that the question as to what constitutes an undue discrimination and an undue preference or advantage is not a question of law but a question of fact. (See *Pennsylvania Co. vs. U. S., 236 U. S. 351; Nashville, Chattanooga & St. Louis Ry. Co. vs. Tennessee, 262 U. S. 318).*

It is also well established that, even if the constituent facts bearing upon the question of discrimination are undisputed, the final fact as to whether or not the evidence shows discrimination is a question to be determined by the Commission and that the conclusion of the Commission upon that question is binding on the Courts, if there was substantial evidence before the Commission supporting its finding. (See *U. S. vs. Louisville & Nashville Ry., 235 U. S. 314).* Arbitrary action and error of law result only when the Commission has refused to consider evidence or has acted without substantial evidence. *(See Baltimore & Ohio Ry. vs. U. S., 264 U. S. 258).*

In reaching the conclusions now under attack by appellants in this case, the Commission had before it evidence of the most substantial and satisfactory character. Every phase of the situation is completely and adequately covered—the competitive relationship between the contending parties, the relative services performed by the carriers, and all of the various transportation questions entering into an investigation of discrimination and preference. As a matter of fact, the record shows conclusively that, if any difference is to exist between the export and domestic rates, the for-

mer, based upon the service performed, should be less than the domestic rates.

Aside from that fact, however, this Court has never condemned a finding of discrimination by the Commission because of differences in the transportation service performed, if in fact the Commission did consider those differences. In the case of *United States vs. Pennsylvania Railway Co., 266 U. S. 191*, this Court had before it for consideration a discrimination order issued by the Commission in a case in which it was shown that, in order to remove the discrimination found to exist, either a further extension of the tracks of the carriers or an enlargement of the common use of their terminal facilities would be necessary, due to the fact that the industries against which the discrimination was found to exist were without certain switching zones. Regardless of the fact that it was shown that additional services were required in order to reach the plant of the complaining parties, this Court nevertheless held that the Commission's discrimination order was a valid exercise of the powers conferred upon it. As a matter of fact, the situation involved in that case brought into question the performance of terminal services not altogether dissimilar from those involved in one phase of the instant case, except that in the instant case the record shows that less service is involved in transporting the export commerce, as compared with the domestic commerce, whereas, in that case the record showed that additional services were performed for the complaining parties in some instances. Nevertheless, this Honorable Court approved the Commission's order

requiring the discrimination to be removed, because, taken as a whole, the services were shown to be substantially the same.

Perhaps the most interesting case, however, in which this Court has sustained a discrimination order of the Commission, is that of *United States vs. Illinois Central Ry., 263 U. S. 515.* In that case rates on lumber had been made applicable from a large blanket territory which extended from south of Jackson, Miss., to the Gulf of Mexico, approximately 230 miles, and from the Mississippi River into Alabama. From Knoxo, a point on a small independent line, 27 miles from Fernwood, the rates were 2 cents per 100 pounds higher than the rates from the group and 2 cents per 100 pounds higher than the rates from Fernwood, the junction point at which the lumber from Knoxo was delivered to the Illinois Central. The distance to the northern markets from the blanket group was in some instances less, and in other instances greater, than the distance from Knoxo. There was no question that, from some parts of the group, and particularly from the main line points of the Illinois Central, the cost of transportation was less than the cost of transportation from Knoxo situated on the branch line 27 miles from the main line of the Illinois Central. It is obvious that the service from Knoxo was greater than the service from Fernwood, but this Court, speaking through Mr. Justice Brandeis, held that the Commission might view the situation as a whole and pass upon the services performed with regard to the entire blanket and that the order requiring

the removal of discrimination was a valid exercise of the Commission's powers under the Interstate Commerce Act. At page 524 the Court stated:

> "Every factor urged by the carriers as justifying the higher rate from Knoxo appears to have been considered by the Commission. How much weight must be given to each must necessarily be left to it."

We most respectfully submit that every factor urged by the appellants in the instant case has been carefully considered by the Commission. As a matter of fact, the contentions of appellants now before this Court have twice received at the hands of the Commission most careful and detailed consideration. In the first opinion of the Commission, *100 I. C. C. 159*, the Commission summarized the evidence and the contentions of the parties in the following language:

> "The water-front facilities and the carriers contend that the transportation costs connected with the carriage of shipments to the ports under through export bills of lading are greater than those connected with domestic shipments to the ports, and that the value of the service to the shipper is greater. They state that it costs more to make out an export bill of lading than a domestic bill; that there is more telegraphing and telephoning, added messenger service, and greater free time accorded export shipments than domestic shipments. As before pointed out, however, the export rates are not confined in their application

to shipments moving on through export bills of lading, and the added elements of cost mentioned above would vary per unit of 100 pounds, dependent upon the size of the total consignment. Furthermore, the Galveston interests show that the (fol. 34) average detention of cars containing export shipments is little if any greater at that port than the average detention of cars containing domestic shipments. The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates. Especially is this so when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity." (R. 46-47).

We would direct particular attention to the similarity of the situation described in the concluding sentence of the above quotation to that involved in the case of *United States vs. Illinois Central Railway Co., supra.* In that case the rates were applicable to and from a broad blanket group, and the rates from Knoxo were made higher than the general level of rates from that blanket group. The significance of the last sentence in the above quotation is, therefore, quite important. The rates are generally made the same to all Texas ports, as stated by the Commission. In other words, we have here a large blanket adjustment as in the *Illinois Central Case*, above referred to. For instance, the domestic rate of 80 cents from Dallas, Texas, to Galveston, Texas is shown in the record before the Com-

mission to be the same as the rate from Dallas to Houston, yet the export rate from Dallas to Houston was 3.5 cents per 100 pounds higher than the domestic rate from Dallas to Galveston. It is also true that the export rate to Galveston was 3.5 cents per 100 pounds higher than the domestic rate to Galveston.

The point we desire to emphasize, however, is the fact that the Commission in its first opinion considered the evidence it had before it—the evidence which disclosed the relative transportation services performed in connection with the two classes of shipments in the instant case, exactly as it had done in the case of *United States vs. Illinois Central, supra.* The quotation above from the Commission's first opinion shows that the Commission considered the evidence introduced by these appellants with regard to the through bill of lading, the value of the service to the shipper, the question of the relative costs of export commerce and domestic commerce, and the question of free time accorded export shipments and domestic shipments. The Commission had before it all the facts, and those facts were given the most careful consideration.

Subsequent to the announcement of the original opinion by the Commission, and largely upon the petition of the appellants herein, the Commission reopened the matter for further consideration and afforded these appellants another opportunity to introduce evidence and argue their contentions. The appellants did introduce evidence upon rehearing concerning these matter and, after further hearing and re-consideration of the evi-

dence, the Commission handed down its second opinion, affirming in every particular the conclusion previously announced. *123 I. C. C. 685.* (R. 61-62).

It cannot be asserted, therefore, that the Commission's finding of discrimination was not based upon substantial evidence reflecting the relative transportation services and transportation conditions. It cannot be contended that the Commission's order was issued for the purpose of equalizing commercial conditions, when, as a matter of fact, the record shows that the Commission gave careful and detailed consideration to all of the relative items of transportation cost and transportation service, and based its finding and order upon that consideration. We feel no hesitancy, therefore, in defending the power and jurisdiction of the Commission in issuing the order here under attack. Its finding of discrimination represents a reasonable and logical conclusion of fact based upon evidence of the most satisfactory character, and its order directing the carriers to remove that discrimination was a valid and proper exercise of the powers conferred upon it by the Interstate Commerce Act.

II.

The Commission has power, authority, and jurisdiction to require the removal of a discrimination and prejudice by fixing the specific rate necessary to remove it.

The issue presented to this Court with regard to the fixing of the specific rate for the removal of the dis-

crimination found to exist in this case involves two more or less distinct questions:

1. The power and authorty of the Commission under the Act to fix rates in any case of discrimination and preference, for the purpose of providing an exact method of removing the discrimination and preference.

2. The power and authority of the Commission to fix the rate in a case, such as the present, in which the carriers have specifically requested that the rate be fixed and have introduced evidence to afford the Commission a basis for fixing the exact rate necessary to remove such discrimination and preference.

Appellants admit, at page 61 of their brief, that the rail carriers, respondents in the proceedings before the Commission, had the right to establish and put into effect any rate which, in the carriers' judgment, would have been the proper rate for application to both domestic and export commerce. Appellants' argument appears to be that, if the Commission had done no more than order the discrimination removed and if, as a result of that order, the carriers had established one rate for application to both domestic and export commerce, such rate would be satisfactory to them. We most respectfully suggest that appellants are now in no different position than if the matter had been handled as suggested, for the reason that the carriers have accepted the single rate fixed by the Commission as the proper rate to apply to both domestic and export commerce, and have published it by filing it with the Interstate Commerce Commission.

In addition, the carriers have abandoned their attack upon the Commission's order fixing the rate and necessarily, therefore, have accepted such rate as satisfactory to them. The appellants are therefore left in exactly the same position they would have occupied had the carriers on their own initiative established the single rate which is now in effect. They have, therefore, the same remedy at law insofar as the reasonableness of the single rate fixed by the Commission may be concerned, as if that rate had been voluntarily established by the carriers, namely, they have their right under Sections 13 and 15 of the Act to appeal to the Commission in a proper complaint attacking the rate as unreasonable and seeking reparation for any amount paid in excess of what the Commission may find to be a reasonable rate.

The issue as to the fixing of the rate upon rehearing in these proceedings has arisen as a result of the fact that the Commission, in its first decision, in *100 I. C. C. 159*, issued an order requiring the discrimination and preference to be removed (R. 53), without prescribing the exact method for the removal of that discrimination. In that first opinion, however, the Commission stated at page 167 (R. 49).

> "The investigation did not cover the reasonableness of the rates and our findings here are not to be construed as authorizing the carriers to increase their present revenues. Rather, the rates should be so readjusted as to preserve existing revenues."

The carriers, respondents in the proceeding before the Commission, endeavored to comply with the Commission's order by fixing one rate which would, in their opinion, preserve existing revenues on both domestic and export traffic. They found, however, that, in accomplishing that purpose in the manner decided upon, they would violate an order of the Commission issued in *Docket 11965* by increasing certain rates prescribed in that case. In addition to this fact, they found the Railroad Commission of Texas unwilling to increase the Texas intrastate domestic rate and unwilling to grant the carriers authority to so increase such rates. The carriers, therefore, sought to have the Interstate Commerce Commission fix the exact rate necesary to remove the discrimination and preference, in order that they might be relieved of the outstanding order in *Docket 11965* and in order that they might be provided with the basis for a demand upon the Railroad Commission of Texas to readjust the Texas intrastate rates. The purpose of the Commission's notice for further hearing cannot be properly understood except by reference to the situation which thus made it necessary. That notice stipulated that the Commission would determine, upon rehearing, what rate should be established for the purpose of removing the discrimination and preference. The order and notice of the Commission for re-hearing did not bring in issue the reasonableness of the rates *per se;* it involved simply the question as to what readjustment, as between the domestic and export rates, would remove the dis-

crimination found to exist, without decreasing the carriers' revenues.

Proceeding first to a discussion of the carriers' request to have the exact rate fixed and the evidence submitted for that purpose, we would call attention to the circumstances surrounding this particular phase of the case. The Commission, in its first opinion, found, at page 166 of volume *100 I. C. C.* (R. 49), that the adjustment of export and domestic rates was unduly prejudicial to up-town and interior warehouses and unduly preferential of water-front warehouses, and its order simply required the carriers to remove that preference and advantage (R. 53). The method of removal was left entirely in the hands of the carriers. Thereafter, the carriers filed petitions with the Commission in which they alleged that they were unable to comply with the present order (R. 53) without violating the Commission's order in *Docket 11965, Galveston Commercial Association vs. Alabama & Vicksburg Ry. Co.*, 77 I. C. C. 338. They alleged further that they were unable to obtain permission from the Railroad Commission of Texas to readjust the Texas intrastate domestic rates so as to make the one-rate plan apply to the Texas ports.

As a result of those petitions, the Commission reopened Dockets No. 14940, 13991, and 11965, for the purpose among others, of determining "what rates shall be established to comply with our findings and order" (R. 55). That notice was served upon all parties interested in these proceedings, including the car-

riers and shippers, and specifically including the appellants, who appeared for the rehearing of the case and offered evidence for the purpose of showing what amount intermediate between the existing domestic and export rates should be established as the single rate, in order to remove the discrimination. (R. 608-618). During the course of the introduction of that evidence, counsel for the appellants stated to the Commission in the following language his understanding of the issues upon rehearing:

> "In this case the Commission has, among other things, set down for determination the question of what rates shall be established to comply with the findings that they may make in this proceeding."

The presiding examiner at the hearing inquired of counsel for appellants:

> "Do you understand that to mean between 80 cents and 83.5 cents, we will say, from Texas common points?"

To which counsel for appellants answered:

> "Yes, sir, it is our position that in no event should the one rate be such as would be higher than the 80 cent rate for the reason it would produce an unreasonably high rate. It is an issue to a limited extent in that way."

The carrier respondents clearly understood the nature of the issues upon re-hearing, and introduced extensive evidence, the purpose of which was to show what rate should be established for application to both domestic and export commerce without impairing the carriers' revenues. That testimony was presented by Witness S. G. Reed (R. 815-844); Witness Drake (R. 945 to 850); Witness E. A. O'Donnell, (R. 851-853); Witness Cummings (R. 783-813); and Witness Bowden (R. 813-815). The testimony consisted, in the main, of an analysis of the movement of cotton to the various port concentrators and a discussion of the services rendered by the carriers in making delivery to water-front facilities and to ship-side wharves. Witness S. G. Reed, referring to the evidence of the carriers on this question stated:

> "They have made an exhaustive study of the handling of the Texas cotton to the Texas Gulf ports for the season 1924-25." (R. 817).

This witness further stated:

> "The carriers desire to assist the Commission in determining what rate, if a one-rate plan is to be prescribed, is the one that will preserve their revenues." (R. 817).

The witness further stated that:

> "We are firmly of the opinion that at least an 83-cent basis is necessary to preserve these reve-

nues under a one-rate plan, and that the figures we have presented justify such a basis which we respectfully request be prescribed, if a one-rate plan is prescribed." (R. 833).

It will be recalled that the carriers in the court below attacked the Commission's final order upon the alleged basis that the rate prescribed by it was not sufficiently high to preserve the carrier's revenues. However, after the decision of the three-judge court below, that attack was abandoned. In referring to the appellants' and the carriers' contentions, the court below stated:

> "We are further of the opinion that, in view of the proceedings before the Commission, in which all parties participated under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, petitioners having participated in that hearing without objection or contest, and the carrier plaintiffs, having in fact invoked the Commission's aid upon the point, are in no position now to seek injunctive relief against the named rate, but should, if the rate is deemed not just and reasonable per se, pursue their remedy before the Commission in appropriate proceedings available to them for that purpose." (R. 141).

We have, therefore, the following significant chronology of events to which we would request attention before proceeding to a discussion of the propositions of law here raised:

1. The appellants herein first petitioned the Commission for re-opening and reconsideration of its decision, and did not see fit in that petition to ask a hearing on the reasonableness of the rates *per se*.

2. The Commission i sued its notice, specifically setting forth as one of the issues the determination of what rate should be established for application to both domestic and export commerce in order to remove the discrimination and preference previously found to exist.

3. That notice re-opening the case was served upon appellants herein shortly after December 28, 1925.

4. The first hearing upon the re-opened case was held in Houston, Texas, April 26, 1926. Subsequent hearings were held at Dallas, Texas, and New Orleans, La. At no time did counsel for the appellants deem the question of the reasonableness of the rates *per se* of sufficient importance to file with the Commission a complaint, which might have been properly filed at any time, bringing in question the reasonableness of the rates involved under Section 1 of the Act.

5. The Commission, in its opinion on re-hearing, *123 I. C. C. 685*, gave detailed consideration to the evidence of the carriers offered for the purpose of determining the amount of the single rate under the one-rate plan (R. 64-67), and concluded that discussion of the evidence with the following statement:

"Furthermore, the above finding is without prejudice to further inquiry into the reasonableness of the above rates in connection with other cases now pending." (R. 67).

The court below used the following language in referring to the evidence upon which the Commission fixed the single rate:

"***There is ample evidence to support a finding that under the practice prevailing as to shipments to the ports a rate of 81 cents would be a just and reasonable rate to remove the discrimination existing under the two-rate plan * * *" (R. 141).

The common carriers, respondents before the Commission, are the only parties in interest who may properly maintain a suit in any court attacking the Commissions' order fixing the specific rate to remove the discrimination found to exist. It is the rights of the common carrier alone which require a hearing and the introduction of evidence to determine the validity of an order of the Commission fixing rates. The common carriers, having sought the aid of the Commission in fixing the rates, having sought the re-opening of *Docket 11965* for that purpose and having introduced evidence upon that question, apparently saw the inconsistency of their position before the court below and withdrew their attack upon that decision.

It is apparent, furthermore, that the rights and interests of the shipping public generally cannot possibly suffer injury as a result of the order of the Commission fixing the rates here involved. If the rate fixed is unreasonable, the appellant shippers here complaining have an adequate remedy under Sections 13 and 15 of the Interstate Commerce Act. They may complain to the Commission, and if the rate is found unreasonable, they may obtain reparation on past shipments and secure the establishment of a reasonable rate for the future.

A state of facts almost identical was presented to this Court in the case of *United States vs. Merchants & Manufacturers Traffic Association of Sacramento, Calif., 242 U. S. 178.* In that case the Commission had undertaken numerous investigations concerning fourth-section applications of the carriers operating lines of railway in trans-continental transportation to the Pacific Coast. In those applications certain interior western cities had been included as terminal cities and were thereby accorded lower rates than the rates applicable at intermediate points. Among those points thus accorded the benefit of the lower port rates were Sacramento, Stockton, San Jose, and Santa Clara. Upon the application of the carriers for fourth-section relief, the Commission issued orders which modified the basis of prescribing the rates and established certain zones on the Pacific Coast. The carriers made an attack upon the validity of this order, and the Commission's order was sustained in the *Inter-Mountain*

Rate Cases (U. S. vs. A. T. & S. F., 234 U. S. 476). Subsequent to that decision by this Court, the Commission made certain modifications of its fourth-section orders, in line with certan amendments of the Interstate Commerce Act which had become effective in the meantime. The effect of these amended fourth-section orders of the Commission was to eliminate Sacramento, Stockton, San Jose, and Santa Clara from the original applications of the carriers, thus depriving those points of the advantage of the rates applicable to the port cities. Thereupon, Sacramento and the other interior cities involved attacked the Commission's order on the ground that it had been made without according them the privilege of a hearing on the reasonableness of the rates involved, and, further, upon the ground that no justification existed for an increase in their rates. This Court, speaking through Mr. Justice Brandeis, answered that attack in the following language, which is specifically applicable to the instant case:

> "While it is proper and customary for communities or shippers interested to participate in hearings held, there is no provision for notice to them. They are not bound by the order entered; at least, in the absence of such participation. And if the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, Sections 13 and 15 afford ample remedy. Respondents contend that, after the amended order was entered and the tariffs filed, they did apply to the Commission for relief, 'but were de-

nied the right of a hearing', and that 'their protest and demand were ignored and denied'. What they did was to petition for a 'rehearing' in the proceedings under the 4th section, to which they now say they were not parties, instead of applying for redress under Section 13, as they had a legal right to do. *They mistook their remedy.* (Italics ours). To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission; and, as this case illustrates, the attempt of the court to remove some alleged unjust discriminations might result in creating infinitely more. The decree of the district court cancels the amended order and the tariff only so far as it concerns the four complaining cities, and thereby discriminates perhaps most unjustly in their favor as against the other 181 interior cities."

It is true that the *Sacramento Case, supra,* involved action under Section 4 of that Act, relating to the long and short-haul rates; but this Court has held that the purpose of Section 4 is to prevent unjust discrimination (See *Skinner & Eddy vs. U. S., 249 U. S. 449,* at page 576). The specific holding of the court in the last-cited case was that Section 4 should not be read alone, but must be read in the light of the purpose of its enactment, which was to prevent unjust discrimination. Therefore, the decision in the *Sacramento Case, supra,* is directly in point here, for the reason that the specific matter involved was a discrimination resulting from lower rates to the more distant points and higher rates to intermediate points.

Sacramento and the other cities involved were placed upon an intermediate basis which resulted in an increase in their rates without a hearing as to the reasonableness *per se* of such rates. Upon those facts this Court held that the Commission's order was a valid exercise of power and that there was no ground for injunctive relief, because the plaintiffs before the court had an adequate remedy at law provided by Sections 13 and 15. It is clear that the appellant shippers had ample opportunity to seek and obtain a hearing upon the reasonableness *per se* of the rates involved under Section 1, and that they did not see fit to raise such issue before the Commission. It is equally clear, therefore, that the interests of the shipper in such a situation are not imperiled, the shipper having an adequate remedy if the rates be in fact unreasonable.

In the instant case, as in the *Sacramento Case*, the shipper has mistaken his remedy. The real parties in interest in the matter of fixing the rates, the common carriers, are not here complaining. In the case of *Interstate Commerce Commission vs. Chicago, Rock Island & Pacific, 218 U. S. 88*, at page 108, this Court stated:

> "We have said several times that we will not listen to a party who complains of a grievance which is not his."

Appellants' brief herein, particularly at pages 52 to 62, together with the cases there cited, show clearly

that appellants are before this Court with a complaint based entirely upon an alleged violation of the rights of the carriers, who are not here complaining The cases there cited, in some instances, actually deal with confiscation of the carriers' property and the violation of the carriers' constitutional right to a hearing.

Furthermore, the statutes confer authority upon the Commission in plain and unambiguous terms, to fix just and reasonable rates for the purpose of removing discrimination. We quote the pertinent part of Section 15, paragraph 1:

> "That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what

will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

We respectfully request particular attention to the fact that "whenever * * the Commission shall be of the opinion that any * * rate * * is or will be * * unjust, discriminatory, or unduly preferential or prejudicial * * the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rates * * *thereafter to be observed in such cases*" (Italics ours). It is to be observed that Section 15, paragraph 1, provides that the Commission may prescribe a just and reasonable rate where the rates are found either unreasonable or dis-

criminatory and preferential. The use of the disjunctive "or" indicates clearly that the Commission may, in either case,—where the rates are found unreasonable or where the rates are found merely discriminatory and preferential,—prescribe a just and reasonable rate for the purpose of correcting the unreasonableness or for the purpose of removing the discrimination and preference. Such is the only reasonable interpretation of the language employed, and such was the suggested interpretation placed upon the statute in the case of *O'Keefe vs. U. S., 240 U. S. 294.* Such was also the view of the three-judge court below in the instant case. We quote from the opinion of the court below:

> "The full Court is, however, of the opinion that a fair construction of the words 'just and reasonable' as used in the context above quoted, permits the conclusion that in a discrimination case under Section 3 such as this is, it is only necessary that the rate fixed upon to remove the discrimination be found to be just and reasonable for that purpose, and that it is not necessary that it be found just and reasonable per se." (R. 140).

In conclusion under this heading, we most respectfully submit that the real party at interest is not now complaining before the Court; that the appellants have an adequate remedy for injuries sustained as a result of any rates involved in this proceeding which may be unreasonable, and, further, that the Commission was

and is empowered under Section 15, paragraph 1, of the Interstate Commerce Act to prescribe a just and reasonable rate for the purpose of removing a discrimination and preference previously found to exist. Especially is this true in the instant case, where the Commission had an outstanding order fixing just and reasonable rates which necessarily had to be amended in order to permit compliance with its subsequent order requiring the removal of the discrimination and preference found to exist in the instant case. Furthermore, we would emphasize the fact that the fixing of the rate by the Commission in this case was in response to a specific request from the carriers, for which purpose the carriers submitted evidence at the hearing. The appellants now before this Court participated in those hearings, and have not yet attempted to bring in issue before the Commission the reasonableness *per se* of the rates here involved or to obtain redress for any excess payments which they may conceive themselves to be making under the readjusted rates.

III.

The Commission's order relates in no way to allowances made by the carriers to any shipper. The question involved as to allowances is a matter of tariff interpretation.

In the first opinion by the Commission in this case, *100 I. C. C. 159*, at page 167, the Commission stated:

"This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching." (R. 49).

In the second opinion of the Commission, *123 I. C. C. 685*, at page 696, with regard to this matter the Commission stated:

"In our prior report we referred to the fact that in order to conserve cars for line-haul movements, and as an aid in preventing terminal congestion during periods of heavy (fol. 47) traffic, respondents make allowances to shippers who, in lieu of switching, dray their cotton from the uptown warehouses and compresses to shipside, and said that we saw no reason for disturbing that practice. The allowances are made only on cotton which respondents are under obligation to transport to shipside under transit arrangements. The water-front facilities now contend that, if the city delivery and shipside rates are to be equalized, respondents should be required either to discontinue the drayage allowances or make allowances for handling cotton from the water-front warehouses to shipside. Respondents ask us to determine whether such allowances may be made at the water-front facilities, and if they may be made what they should be. Upon the present record we see no reason for condemning reasonable allowances for drayage from the uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable considering the benefit to respondents flowing

from such substitute service, and must not be used as a cloak for unlawful preference to shippers furnishing such substitute service. Not all of the cotton handled by the water-front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water-front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging where barging is used as a substitute for switching. But upon cotton delivered to shipside from water-front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water (fol. 47-a) front facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior or an up-town warehouse to the railroad car or dray is an intraplant movement. No allowances may lawfully be made for these intraplant movements." (R. 67-68).

It should be observed that the Commission, in both opinions, referred to the matter of allowances as an existing practice of the carriers, and commented on the obligation of the carriers under existing transit privileges to perform additional transportation service

At page 66 of the appellants' brief it is conceded that the obligation to perform the additional transportation service is a part of the carriers undertaking provided for in the *tariffs*. The facts are that such provisions have been published in the tariffs for many years. Such being the case, it is clear that appellants are in error in stating that the Commission's order requires the carriers to make allowances to any shipper or to cease and desist from making allowances to any shipper. The facts are that the existing tariffs establish a transit privilege at up-town facilities and at all facilities where additional rail transportation is necesary to reach shipside. Under that transit privilege, the carriers are required by the provisions of their tariffs, legally on file with the Commission, to refund to the shipper certain specific amounts, not to exceed 20 cents per bale, when the shipper performs the transportation service which is required of the carrier under the transit privilege. Whether or not appellants are entitled to such allowances is purely a matter of the interpretation of the terms of existing tariffs on file with the Commission, and when the Commission dealt with the question in its report in this case, it was dealing solely with a question of tariff interpretation. If appellants deem themselves aggrieved by the interpretation thus placed by the carriers and by the Commission on this long-established provision of the tariffs, they have their remedy in the form of a direct action in the courts to recover any amounts which they conceive to be due them. *Great Northern vs. Merchants Elevator Co., 259*

U. S. 285; Turner, Dennis & Lowrey vs. Chicago, Milwaukee & St. Paul, 271 U. S. 259.

It should be observed, also, as the record affirmatively shows, that, where additional rail transportation is necessary from a water-front facility to reach shipside, the existing transit privileges and the allowances thereunder are applicable to the business of the appellants, and 70 per cent of the appellants' busines is so handled. (R. 297). 30 per cent of the business of the appellants is delivered direct to ship from appellants' facility by the intra-plant handling of the cotton, as shown by Appendix "B" herein. The expression of the Commission with regard to the impropriety under the tariffs of granting allowances to the water-front facilities for intra-plant services performed by them relates to that 30 per cent of the business. The order of the Commission, however, did not direct the carriers to make an allowance to anyone and did not order the carriers to cancel an existing allowance accruing to any shipper under existing tariffs. The expression from the Commission's second opinion dealing with the question of allowances, quoted in full above, is nothing more than an interpretation of existing tariff provisions and is a correct interpretation of such provisions, as the facts in the instant case clearly show.

The facts show that the service in question is an intra-plant service which it is not the duty of the carriers to perform and which the water-front facilities cannot in fact permit the carriers to perform. The con-

tention that the water-front facilities should have an allowance for this service was advanced by counsel for the Houston Compress Company, and most of the testimony in the record related to that company's Long Reach plant. At that plant an overhead trolley or conveyor system is in operation. It is indicated on the blue print, Exhibit A-33 (Appendix "B") by broken lines. It runs through the 10 warehouse compartments, through the press room, along the receiving platform at the rear of the main warehouse, to and through the one-story warehouse to the rear of the main warehouse, and out to, and along, the entire length of the wharf. This trolley system, as the evidence shows, provides an efficient and economical method of moving cotton from place to place in the plant.

Inbound cars of cotton consigned to the plant are placed by the carrier on the switch track running alongside the receiving platform at the rear of the main warehouse. The bales are unloaded from the cars to the platform by hand trucks. The bales are first weighed, then samples are taken from each and sent to the sampling room. (R. 489). The cotton is held on the platform until the samples have been examined and classed, and the class indicated on the tags. (R. 469). Then the cotton is put on the trolley and trolleyed to the press room, where it is pressed to high density and patched. (R. 469). It is then sent to a segregating room (compartment No. 1), and is segregated according to grade. (R. 469). It is then loaded on the trolley and trolleyed to storage space in va-

rious parts of the warehouse, wherever there is room. (R. 464).

Outbound cotton, for loading on ships docked at the wharf of the plant, is trolleyed from the warehouse to the space on the wharf designated as the ship's berth. (R. 465-469). See blue print Exhibit A-33 (Appendix "B"), which shows the spaces designated on the wharf as ships' berths, that is, berths Nos. 1, 2, 3, and 4. Sometimes hand trucks are used to move the cotton from a compartment of the warehouse to the wharf. For example, if a bale of cotton located in compartment No. 3 opposite the door leading to berth No. 2 is to be moved to berth No. 2, it would be hand-trucked. (R. 476). To illustrate how close this warehouse is to the water's edge, attention is called to the testimony of Mr. Scott that the trolley in compartment No. 3 is only 50 to 55 feet from berth No. 2. (R. 476).

When the complete cargo of a particular ship has been placed on the wharf in the space designated as the ship's berth, the ship will issue a bill of lading, and becomes responsible for the cotton. The loading of the ship is performed by the ship's labor.

On the outbound shipments by railroad the same procedure is followed; the cotton is put on the trolley in the compartment where it has been stored and is trolleyed to the platform where the cars are spotted. (R. 469-473).

Unloading of inbound rail shipments of cotton from cars to warehouse is paid for by the carriers. Loading

of the outbound cotton from the ship's berth into the hold of the ship is paid for by the ship. It is obvious, therefore, that the allowance from the railroad which appellants would claim is an allowance for the service of moving the cotton from the storage compartments of the warehouse to the ship's berth on the wharf. And the evidence is indisputable that this service is performed by the overhead trolley system of the plant, and is identically the same service as that performed in placing the other 70 per cent of the cotton in position to be loaded onto the railroad cars. The trolley system is in operation at all times (R. 474), performing various movements necessary in the operation of the plant, and, in every phase of its operations, performs a service which is distinctly intra-plant in character. Furthermore, it is established beyond dispute that the service thus performed could not possibly be performed by the carriers. The testimony of the officials of the plant demonstrates that fact. Witness Scott, Vice-President and General Manager of the Houston Compress Company testified in regard to that question:

> "We do not permit the employees of the steamship company to come into Compartments 1, 2, 3, 4, to 10, shown on Exhibit A-33, to pick up cotton and take it into berths 1, 2, 3, and 4. We do not permit anybody to go into any of our compartments (R. 1369). We would not permit railroad employees to come into storage spaces 1 to 10 and take cotton and put it in berths 1 to 4. We insist on doing that ourselves. I am General Manager of the Compress Company, which includes berth

spaces 1, 2, 3, and 4, as well as other parts of the facility." (R. 470).

A detailed description of the trolley system and of the method of handling cotton in that plant was given by Witness Scott, record pp. 475 to 478, inclusive.

The above testimony shows that the Long Reach plant must necessarily perform for itself the service of moving the cotton from the storage compartments of its warehouse to the ship's berth. The service, therefore, is obviously an intra-plant service which the railroads are under no duty to perform, and which the railroads could not perform, and there is absolutely no basis for the claim that the railroad should pay for such service.

Counsel contend at page 66 of their brief, that at the Long Reach plant (the floor plan of which is depicted by Appendix "B") the cotton could be switched from track No. 2 opposite the rear platform of the warehouse out to the main line and thence around to the wharf track No. 1. At page 66, counsel states that the carrier is under a tariff obligation to perform this service. As a matter of fact, however, the warehouse company does not not want its cotton handled in that way and has made no demand upon the carrier to perform that service. Witness Scott testified at pages 475-6 of the record:

> "The trolley operation would be cheaper than loading it onto cars and having it switched, and a larger volume could be handled."

Therefore, as the witness states, because of the volume of cotton handled, it could not be moved to the wharf in railroad cars, and the company prefers to move it to its wharf by trolley. The appellants, therefore stand in the position of demanding that the carriers make an allowance for a service which they do not desire and which, according to their own admission, would not be actually performed by the rail carriers under any circumstances.

The facts are conclusive to the effect that the services performed by the water-front facility in breaking the cotton out of storage Compartments 1 to 10, Appendix "B", and moving it to the wharves marked 1, 2, 3, and 4 on Appendix "B", constitute what is purely an intra-plant movement of the traffic. As such, that service could not possibly be performed by the carriers, and could not possibly be any part of the service which the carriers' existing tariffs obligate them to perform. They are services of identically the same character as the intra-plant services performed at the up-town facilities and the interior facilities in breaking the cotton out of storage and loading onto drays for transportation to the waterfront, in lieu of such switching. (R. 735).

It is obvious that, if an allowance were made to the appellants herein for the performance of such intra-plant services, the other shippers under the law would be entitled to a similar allowance. Interior shippers, for instance, would be entitled to an allowance to cover the cost of breaking the cotton out of storage

and loading it into box-cars. The ultimate result would be that the appellants' position would be the same as it is today.

In connection with this matter of allowances, it should be borne in mind that an interior shipper, shipping on a through bill of lading or on a bill of lading marked for export, receives no allowance for drayage, because none is performed. His cotton is loaded in carload lots at an interior point and is transported direct to shipside and delivered upon Track No. 1, Appendix "B", the carrier absorbing the cost of unloading and placing in ship's berth. Domestic cotton from an interior point going to appellants' plant (Appendix "B", would be delivered on Tracks 2 and 3, and the carrier would absorb the cost of unloading. The service of moving the cotton after unloading and storage in Compartments 1 to 10 (Appendix "B") to the wharves 1, 2, 3, and 4 (Appendix "B"), is purely an intra-plant service of the water-front concentrator similar to the nitra-plant service of the interior concentrator in breaking his cotton out of a storage house and loading it into outbound box-cars.

The performance of an intraplant service by the appellants is of no benefit to the common carrier, but on the contrary is performed for appellants' own benefit and convenience. The carrier does not receive the same benefit from this intraplant service as it receives in connection with the drayage performed by the uptown and back-of-the-water-front facilities. Therefore, the facts of this case show that the shipper is not per-

forming a transportation service for which it would be entitled to an allowance, as set forth by this Court in *Union Pacific Railway Company vs. Updike Grain Co., 222 U. S. 215,* at page 220, where the court stated:

> "The carriers cannot pay one shipper for transportation service, and enforce an arbitrary rule which deprives another of compensation *for similar service.* To receive the benefit of such work by one elevator without making compensation therefor would, in effect, be the involuntary payment by such elevator of a rebate to the railroad company, for it would enable the railroad to receive more net freight on its grain than was received from its competitor located on the railroad's track. This cannot be directly done, nor indirectly by means of regulation." (Italics ours).

The significant thing in connection with the above quotation is that this Court has held that in order to obtain the allowance the service performed by the shipper must be a service similar to that performed by other shippers. There can be no dispute in the instant case that the service performed by the appellants is not similar to the service performed by other shippers, for the reason that, in those instances where the appellants performed a similar service, the Commission has correctly interpreted the tariffs to entitle appellants to the allowance. At page 196 of *Vol. 128, I. C. C.,* the Commission stated:

> "Not all of the cotton handled by the water-front facilities is delivered to shipside at adjacent

wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water-front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances."

It is obvious, therefore, that the Commission's interpretation of the tariff in the second opinion at the request of the carrier respondents is a correct and lawful interpretation of an existing tariff provision, for the reason that it holds that where the appellants have performed a service similar to that rendered by other shippers they are entitled to the allowances made to other shippers under the existing tariffs. If appellants question the correctness of this tariff interpretation, their remedy certainly is not an attack upon an order of the Commission which relates to another matter, but, as shown by *Union Pacific Railway vs. Updike Grain Co., supra*, they have an adequate remedy in the form of a suit at law in the courts for such allowances as the carriers have failed or refused to make in accordance with existing tariffs on file with the Commission.

This Court has had occasion to hold that an allowance to the shipper must be for transportation services. In the case of *Lehigh Valley Ry. vs. U. S., 243 U. S. 444*, at page 446, the Court stated:

"It is true, no doubt, that George W. Sheldon & Company in the performance of the services for

which it is paid, maintains offices here and abroad, advertises the railroad, solicits traffic for it, does various other useful things, and, in short, we assume, benefits the road and earns its money, if it were allowable to earn money in that way. It is true also that in *Interstate Commerce Commission vs. F. H. Peavey & Company, 222 U. S. 42, 46 L. Ed. 83, 32 S. Ct. R. 22*, an owner of property transported was held entitled, under section 15 of the act to regulate commerce, to an allowance for furnishing a part of the transportation that the carrier was bound to furnish. * * * The services rendered by George W. Sheldon & Company, although in a practical sense connected with such transportation, were not connected with it as a necessary part of the carriage—were not transportation service in the language of *Union Pacific Railroad Company vs. Updike Grain, 222 U. S. 215.*"

In the case of *United States vs. Baltimore & Ohio Ry. Co., 231 U. S. 274*, this Court held invalid an order of the Interstate Commerce Commission requiring the carrier to make an allowance to the Federal Sugar Refining Co. for the cost of transporting sugar from its plants ten miles beyond the lighterage zone. The allowance had been granted to Arbuckle Bros., a shipper whose plant was within the lighterage zones. The Commission's order required the carriers to make an allowance to the Federal Sugar Refining Co., whose plant was ten miles beyond the lighterage zone. This Court held that the allowance to Arbuckle Bros. was an allowance to cover transportation service which the

carrier was obligated to perform under its existing tariffs, that the service from the Federal Company was not service that the carrier was obligated to perform, and that the carriers could not lawfully make allowances to shippers for purely accessorial services not in connection with, or in aid of, transportation. Such is clearly the intent and purpose of the Interstate Commerce Act with regard to allowances. Section 15, paragraph 13, of that Act provides that:

> "If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

It should be noted that the Act contemplates allowances only where the shipper renders a service "connected with such transportation" or furnishes an instrumentality "used therein". Appellants' testimony in the instant case shows that the service rendered by the appallants is a service for appellants' own convenience, and that it is not in any way connected with the

service which the carrier could perform in moving the cotton from the adjacent warehouse to the connecting wharves.

The court below, upon mature consideration of the question of allowances, and after the filing of exhaustive briefs by all parties, disposed of the matter in the following language:

> "That it is time enough for a shipper to complain of an allowance or a disallowance when there has been an order on it, and that the present contention is purely academic and speculative." (R. 138).

The movements of the carrier are illustrated by Appendix "A" herein. Considering first the respective movements from the up-town facilities and the water-front facilities, we see that the cotton moves into the up-town facility in the vicinity of symbols (F), (G), and (H), (Appendix "A"), is there delivered into the possession of the shipper, and after concentration and merchandising, is moved to shipside. That movement to shipside the carrier, under its transit tariffs, must perform or pay for. It is obvious that additional rail transportation is necessary for that purpose. To cover the cost of that additional rail transportation, the carrier makes an allowance to the falicity. In the case of a direct movement to the water-front, cotton comes into the yards, symbol (5), (Appendix "A"), moves to the yard at symbol (O), (Appendix "A"), and receives at that time the additional service to the water-

front for which the allowance is made in the case of concentration at the up-town facilities. In other words, the water-front facility receives from the common carrier, in connection with the inbound movement, all of the transportation service that is ever performed, and/or paid for, by the carrier in moving the cotton inbound to up-town facility and outbound from that facility to the water-front.

Furthermore, no question has been raised in these proceedings with regard to allowances made in connection with through bills of lading and export bills of lading covering cotton concentrated at interior points. A car of through-bill-of-lading cotton will move into the yard shown at symbol (5), (Appendix "A"), along with another car of cotton consigned to the appellants, and both cars will move direct to water-front at the same facility shown at symbol (P); one car will be delivered to Track No. 1, (Appendix "B"), the other car of domestic freight will be delivered at Tracks Nos. 2 and 3, (Appendix "B"). No allowance is made to the interior shipper and the service is not greater in reaching shipside than the service in reaching a water-front facility located at shipside. On the contrary, the facts already referred to herein show the service is less in connection with the through-bill-of-lading cotton than the service in connection with either character of cotton concentrated at the port, water-front or back-of-the-water-front.

In conclusion under this heading, we most respectfully submit that the Commissions' order does not

relate to allowances and that, therefore, the question is not before this Court for consideration (See *Proctor & Gamble vs. U. S., 225 U. S. 282; Manufacturers Railway Company vs. U. S. 246 U. S., 457; United States vs. Los Angeles, 272 U. S. 299.* In addition to this fact, the tariff provisions under which shippers are today receiving allowances, are lawfully on file with the Interstate Commerce Commission. Appellants have an adequate and complete remedy at law, if they believe those tariff provisions have been misinterpreted. That they have not sought relief through such remedy clearly indicates that they do not question the correctness of the Commission's interpretation of those tariff provisions in its second opinion in this cause.

IV.

The Commission's order is not based upon commercial conditions and does not deprive the appellants of any transportation advantage resulting from the location of appellants' facilities. The sole effect of the Commission's order is to require the removal of an unjust preference and advantage.

Appellants attacked the order of the Commission upon the ground that such order has the effect of depriving appellants' facilities of certain advantages of location, and they seek to invoke the principle that the Commission has no power to equalize natural advantages as between different shippers. We gather from appellants' brief, page 79, that the advantage of which

they are alleged to be deprived and which they assert should be recognized as a matter of law, is an advantage which exists by reason of the fact that no additional rail transportation is necessary to move to ship-side cotton which is stored in their facilities. Appellants state the character of that advantage in the following language:

> "But the reason the appellants have no such expense is simply that they do not ask that extra service of the carriers and they do not ask it because, by reason of their location in proximity to the ocean carriers, they do not need it."

It is obvious from the facts hereinbefore referred to that appellants do not need the additional service after concentration in their warehouses *simply and solely because they have alreday received those services prior to the delivery of the cotton to their facilities.* In other words, appellants demand and receive all of the services from the common carriers that are rendered in connection with through-bill-of-lading cotton concentrated at interior points and cotton concentrated at up-town facilities . As shown by Appendix "A" herein, the cotton of appellants receives the same service after it reaches symbol (5) as that received by the cotton of the up-town facility and by the interior facility or interior shipper. The only difference is that the transportation service is performed for the water-front man prior to concentration, whereas, it is per-

formed for the interior man and the up-town facility at the port subsequent to concentration.

Appellants have made no effort to reconcile their statement on page 79 to the effect that, because of their proximity to the ocean carriers, they do not need the additional transportation to reach shipside, with the proposition advanced before this Court that they are entitled to an allowance in lieu of transportation. Proposition 3, pages 62 to 70 of the appellants' brief, is devoted to an effort to show that appellants are entitled in law to an allowance for the performance of additional rail transportation. On page 70 of the appellants' brief, they make the unqualified statement that they do not need additional rail transportation. Appellants demand and obtain the rail transportation to shipside, in the first instant, and then endeavor to set up as a natural advantage the fact that it is not necessary to perform further services in order to place the cotton at shipside.

An advantage of location which the law contemplates shall be recognized in rate adjustments must be such as will lessen the cost to the carriers of performing the service. In the instant case, the water-front facility demands the service of the carrier in making delivery, in the first instance, to his facility, in exactly the same manner as the interior shipper and the back-of-the-water-front facility. The transportation service performed in reaching Tracks Nos. 2 and 3 (Appendix "B") is not less than that performed in reaching Track

No. 1 (Appendix "B") of the same facility. As a matter of fact, the record shows that shipside cotton has been, and frequently is, delivered on the same track as domestic cotton. (Witness O. J. Brown, Record 527).

It is inconceivable that there could possibly be any difference from a transportation standpoint between movements of domestic cotton, on the one hand, and export cotton, on the other, to Tracks Nos. 1, 2, and 3 of the facility depicted by Appendix "B". Appellants have failed to refer to any differences, except that it is asserted on page 70 that their cotton does not need additional rail transportation to reach shipside. It is obvious that a car of through-bill-of-lading cotton moving to Track No. 1 (Appendix "B") is no more in need of additional rail transportation to reach shipside than the domestic cotton of appellants.

It is submitted that appellants' facilities are so located as to create a positive disadvantage from a transportation standpoint. A glance at Appendix "A" herein for the purpose of ascertaining the location of appellants facilities, symbol (P), with reference to the carriers' yards and outbound line-haul rails indicates that, as to the 70 per cent of cotton which is not delivered to adjacent wharves for shipside delivery, appellants must necessarily require of the carriers additional outbound transportation over and above the transportation service demanded by all other cotton concentrators. Such cotton must be moved from appellants' facility through the terminals for some five, six, or seven miles

in order to reach the outbound rails for the outbound movement to destinations other than shipside. It is also true that appellants' facilities are located adversely from a transportation standpoint in connection with cotton delivered to shipside at any facility other than the one operated by them, for the reason that the carrier would perform in the first instance the service it performs for the up-town concentrators in reaching shipside, and would thereafter perform for the appellants additional transportation in moving the cotton to other shipside wharves. Appellants' location, therefore, is clearly disadvantageous as to 70 per cent of the cotton handled (R. 286), and as to the other 30 per cent the carriers perform for the appellants all of the service they perform for any other cotton concentrator.

It is submitted, therefore, that the Commission's finding of undue preference and advantage in the instant case is predicated upon the relative transportation services performed and that such finding is in no way based upon the relative commercial position of any of the contesting parties in this proceeding.

CONCLUSION

In conclusion, we most respectfully submit that the Commission had ample power, authority, and jurisdiction, upon the record before it, to require the carriers to remove the preference and discrimination found to exist, and that the Commission, in view of the request

of the carriers to prescribe the exact rate necessary to remove that discrimination, was authorized by law to fix a just and reasonable rate for that purpose without considering its reasonableness *per se* under Section 1. It is further submitted that the appellants have an adequate remedy for the collection of reparation if they have, in any instance, paid an unreasonable rate, and that their complaint in the instant case with regard to the method of procedure followed by the Commission is incompetent to raise even a technical objection to the Commission's action.

We submit, further, that the question of allowances was not affected by the Commission's order, and, consequently, is not involved in this case, and that the Commission's expressions with regard thereto relate solely to a question of tariff interpretation and were not incorporated into the formal order of the Commission. We submit, further, that the Commission's order was not based upon commerccial conditions and that the appellants have not in fact any transportation advantage over their competitors which is recognized in law as justifying a preference and advantage.

We submit, further, that the two carefully considered opinions of the Commission embody a correct analysis of the facts and a correct and proper interpretation of the law. We submit, further, that the decision of the court below, announced after mature and extensive investigation, is based upon correct and proper findings

of fact and a correct interpretation of the law in the light of those facts. The decision below should be affirmed and the case dismissed, and it is so prayed.

Respectfully submitted,

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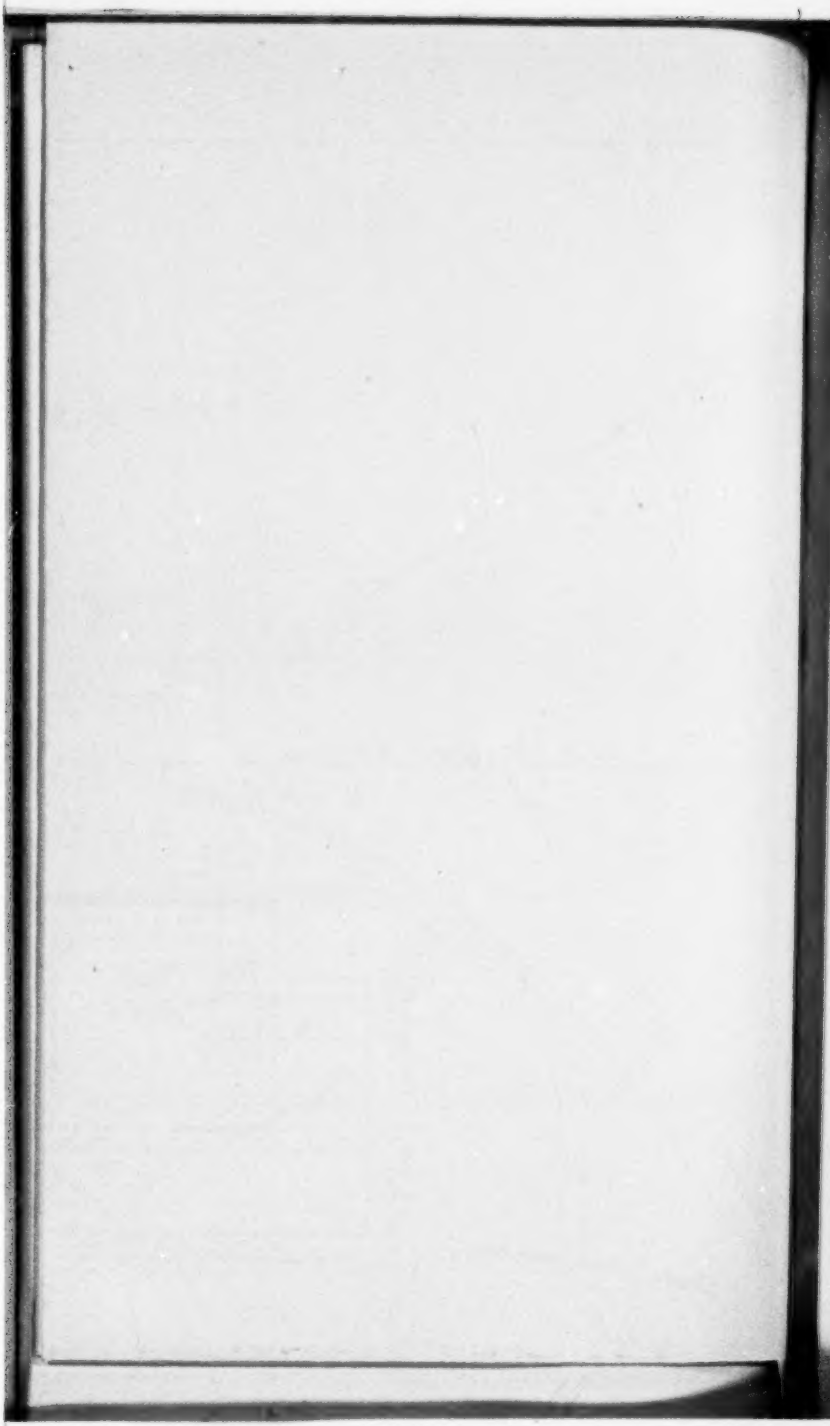

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IN THE

Supreme Court of the United States

No. 19.

ALEXANDER SPRUNT AND SONS, INC., ET AL., *Appellants*,
vs.
UNITED STATES OF AMERICA, ET AL., *Appellees*.

On Appeal From The District Court of The United States For The Southern District of Texas, Houston Division.

SUPPLEMENTAL BRIEF FOR THE INTERVENORS, ARKANSAS COTTON TRADE ASSOCIATION, ET AL., APPELLEES.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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SUPPLEMENTAL BRIEF FOR THE INTERVENORS, ARKANSAS COTTON TRADE ASSOCIATION, ET AL., APPELLEES.

May It Please the Court:

We have been served by counsel for the Appellants with a copy of their supplemental brief. In answer to the query made by the Court through Mr. Justice Brandeis, in which inquiry the following proposition,

to the best of our recollection, was propounded to counsel for the Appellants:

> What effect did the failure of the carriers to appeal from the decision of the court below have upon the rights of the Appellant shippers to maintain their action with regard to the rate prescribed by the Commission to remove the discrimination and preference previously found to exist?

In our original brief we presented to the Court all of our arguments concerning the validity of the Commission's order requiring the discrimination to be removed and also presented to the Court our contention that the Commission's utterances with regard to allowances related to a tariff interpretation question concerning which there was no necessity for an order on behalf of the Commission and concerning which the Commission in fact issued no order. We do not question the right of the Appellant shippers to maintain an action in any court contesting the validity of an order of the Commission requiring the removal of discrimination if in fact the Commission's order was made without evidence or was arbitrary or if there was some irregularity in the proceedings before the Commission or some error in the application of the rules of law. Neither do we question the right of the Appellant shippers to attack an order of the Commission if such order had been issued requiring the carriers to make allowances to some shippers and denying allowances to other shippers under similar circumstances and conditions. We do not understand that the Court's inquiry related to these two propositions just above outlined. Our understanding of the

Court's inquiry may be stated for the purpose of illustration as follows:

> "Assuming that the Commission's order requiring the discrimination and preference to be removed is a valid order, may these Appellants maintain their action in this Court with regard to the rate which the Commission prescribed for the purpose of removing the discrimination and preference since the common carriers affected by that rate have either accepted it as satisfactory to them or at least acquiesced in the Commission's order and published the rate for application to the traffic in question."

The legal right of the shipper under such circumstances is the right to pay no more than a just and reasonable freight rate. The act confers no right upon the shipper to have the rates initiated by any particular person. The Appellants apparently realized this to be the law for we find that at page 57 of their original brief a contention that the right of the shipper only existed as a consequence of the rights of the carrier. The question here presented by these Appellants, therefore, is this: We admit that we have no legal right to have the rate initiated by any particular method, but the carriers do have that right and the failure to exercise it, under the circumstances of this case, has caused legal injury to the rights of the Appellant shippers.

The circumstances of this case are these:

First, the Commission issued an order requiring the carriers to remove the undue preference found in the report to exist.

Second, this order left the method of removal to the voluntary action of the carriers.

Third, the carriers were unable, by reason of disagreements with other parties and by reason of an outstanding order of the Commission in another case, to voluntarily readjust the rates for the purpose of removing the discrimination and undue preference found by the Commission to exist.

Fourth, the carriers appealed to the Commission and asked the Commission to fix the exact rate necessary to remove the undue preference found by the Commission to exist.

Fifth, the carriers appeared before the Commission and introduced evidence for that purpose.

Sixth, the Commission, based upon the application of the carriers and based upon the evidence submitted by the carriers, fixed a rate for the purpose of removing the discrimination.

Seventh, the carriers appealed the Commission's decision fixing that rate to the Federal Statutory Court. That court found that the rate had been fixed upon the application of carriers and upon evidence submitted by the carriers to the Commission.

Eighth, the carriers, after the decision by the three-judge-court, abandoned their attack upon the Commission's order and have therefore accepted as satisfactory to the carriers the rate fixed by the Commission.

We assert that the position of the Appellants here is no different than if the carriers had in the first instance filed the rate with the Commission and the Appellants had gone direct into the court for the purpose of attacking the lawfulness of that rate.

A somewhat similar case from the standpoint of the facts was presented to this Court in the case of *United States v. Merchants and Manufacturers Traffic Association,* 242 U. S. 178. This Court, in that case held:

"While it is proper and customary for communities or shippers interested to participate in hearings held, there is no provision for notice to them. They are not bound by the order entered; at least, in the absence of such participation. And if the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, Sections 13 and 15 afford ample remedy. Respondents contend that, after the amended order was entered and the tariffs filed, they did apply to the Commission for relief, 'but were denied the right of a hearing,' and that 'their protest and demand were ignored and denied.' What they did was to petition for a 'rehearing' in the proceedings under the 4th section, to which they now say they were not parties, instead of applying for redress under Section 13, as they had a legal right to do. *They mistook their remedy.* (Italics ours.) To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission; and, as this case illustrates, the attempt of the court to remove some alleged unjust discriminations might result in creating infinitely more. The decree of the district court cancels the amended order and the tariff only so far as it concerns the four complaining cities, and thereby discriminates perhaps most unjustly in their favor as against the other 181 interior cities."

The distinction between that case and the instant case is found in this fact that in the *Merchants case, supra,* the Commission simply authorized the carriers to make advances in the shippers' rates. In the instant case the Commission fixed the exact rate which has been accepted by the carriers. But, nevertheless, the Commission has not yet passed upon the reason-

ableness of the rate and the Appellant shippers are before the Court in the first instance without first applying to the Commission to pass upon the reasonableness of the rate so fixed and so accepted by the carriers. We therefore contend that their position is no different from the position of the shippers before this Court in the case of *Texas and Pacific v. Abilene Cotton Oil Company,* 204 U. S. 426, and the position of the shippers in the long line of cases which have followed the principle therein established. In the *Abilene Cotton Oil case, supra,* the shippers attacked the rates of the carriers lawfully on file with the Commission as being unreasonable and discriminatory and otherwise unlawful. This Court held, although section 9 of the act specifically gave an alternative remedy of going to the Commission or the courts, that such alternative remedy was inconsistent with the act taken as a whole and that the courts could not pass upon such question without preliminary resort to the Commission. Appellants in the instant case now before this Court are in no different position. This Court cannot determine the legal rights of these Appellants without passing upon the reasonableness of the rate fixed by the Commission and accepted by the carriers. The Commission has not yet passed upon that question. The rights of these Appellant shippers, as established by the act, is to pay no more than a reasonable and just freight rate. If the rate fixed by the Commission and accepted by the carriers is just and reasonable, then no legal rights of these Appellant shippers have been violated. They have not yet sought, in the proper tribunal, a determination of the reasonableness or unreasonableness of the rate fixed by the Commission to remove the preference and discrimina-

tion found to exist. The Commission specifically stated that it did not pass upon that question. (R. 67)

In addition to the contention here made that the shippers cannot maintain this action, without first complaining to the Commission concerning the reasonableness of the rate, we contend that the Commission has been given authority by the Transportation Act of 1920 to fix rates for the specific purpose of removing discrimination. This contention is fully covered by our original brief, pages 75 and 76, to which reference is here made.

CONCLUSION.

We most respectfully submit that Appellants have not shown where they have sustained any legal inquiry by reason of the rate prescribed by the Commission and accepted by the carriers. That it is the rights of the carriers which are involved in the initiation of the rates and that the rights of the shippers are limited to the right to pay no more than a reasonable and just rate. This Court has held time without end, following the *Abilene Cotton Oil case, supra,* that it is the administrative function of the Commission to pass upon the reasonableness of freight rates and that preliminary resort must be had before the Commission before any action may be maintained in the courts.

The decision of the court below should be affirmed and the case dismissed, and it is so prayed.

Respectfully submitted,

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Dated
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November 11, 1929.

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CHARLES E

No. 19

In the Supreme Court of the United States

OCTOBER TERM, 1929

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 19

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., Houston Compress Company et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Arkansas Cotton Trade Association et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The opinion of the specially constituted District Court (R. 131) is reported at 23 F. (2d) 874.

The reports of the Interstate Commerce Commission appear as *Application of Rates on Cotton to Gulf Ports,* 100 I. C. C. 159 and 123 I. C. C. 685. (R. 40–51; 55–79.) A related report, not repro-

duced in the record, is *Galveston Commercial Association* v. *Alabama & Vicksburg Ry. Co.*, 77 I. C. C. 388.

THE QUESTION PRESENTED

The question presented is whether an order of the Interstate Commerce Commission, requiring the removal of undue prejudice and preference resulting from the difference between the export and domestic rates on cotton from the Southwest to Gulf ports, and prescribing the manner in which the rates shall be readjusted in order to remove the undue prejudice and preference, is invalid on the alleged grounds (1) that the order is not supported by substantial evidence; (2) that it deprives appellants of the advantage of their location; (3) that it prohibits allowances by the carriers to appellants for services alleged to be transportation services; (4) that, in so far as it prescribes what the Commission deems to be a fair and reasonable readjustment of the rates for the purpose of removing the undue prejudice and preference, it is beyond the Commission's authority.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act, c. 104, 24 Stat. 379, 380, as amended by Transportation Act, 1920, c. 91, 41 Stat. 456, 479, 484 (U. S. C. Title 49, Secs. 3, 15) read as follows:

> SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue

or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SEC. 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such

case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

STATEMENT

This is an appeal under the Urgent Deficiencies Act, c. 32, 38 Stat. 208, 219 from a final decree (R. 142) of the specially-constituted District Court for the Southern District of Texas, Houston Division, dismissing, for want of equity, bills brought by appellants seeking to enjoin and set aside the Commission's order (R. 80–81).

The order is directed to practically all the railroads operating in the southwestern part of the United States, and requires that they remove "undue prejudice and preference" caused by their rate adjust-

ment on cotton from points in the states of Oklahoma, Arkansas, Texas, and western Louisiana to ports on the Gulf of Mexico.

More than half of the cotton production of the United States, and about a fourth of the world's production, is grown in the four southwestern states. (Ex. A–133.) The greater portion of the production moves to the ports of Houston, Galveston, and New Orleans. (Ex. A–189.) A part of this movement is on through export bills of lading or on domestic bills of lading marked "for export," and goes directly to the wharves for immediate transshipment, but a larger portion is consigned locally to warehouses or compresses at the ports for temporary storage or for various services. (Ex. A–189.) Except to a negligible extent, there is no consumption of cotton at the ports, for virtually all that moves thereto is sooner or later reshipped, mostly to foreign countries, although some moves by vessel in coastwise movement to the New England mills and some is reshipped by rail to the cotton mills of the southeast. (R. 685, 699, 751, 757, 763, 810.)

The rate adjustment found prejudicial and preferential was one under which two rates were in effect from any given cotton-shipping point in the four southwestern states to the Gulf ports, one an export or "ship-side" rate, the other a domestic or "city-delivery" rate. With certain exceptions, the ship-side rate was uniformly *higher* than the domestic.

The ship-side rates included switching to any wharf or pier at the ports and delivery at ship-side—in practice within 200 feet of ship's tackle. (R. 289, 389, 904.)

These rates also included a wharf or pier terminal charge equivalent to 2 cents per 100 pounds, imposed by the wharf owners, who in all instances are other than the railroads. (R. 254, 347, 455, 517.) The railroads pay this wharfage charge out of the ship-side rates, and thus the actual or net ship-side rates for the service performed by them are 2 cents per 100 pounds less than the amounts which they collect from the shippers. Hereinafter ship-side rates will be stated exclusive of the wharfage, and in referring to the difference between ship-side and city-delivery rates only the difference exclusive of the wharfage will be intended.

The city-delivery rates included switching to and delivery upon the side tracks serving any cotton warehouse or compress within the established switching limits of the port cities, which, generally speaking, embrace all the area within the city limits and the industrial district. (R. 239, 344.)

The most important rate involved in this controversy, taken as typical throughout the proceedings, is that applying to Houston and Galveston from "Texas common-point territory"—a huge blanket covering nearly the entire state of Texas beyond a radius of 210 miles from Houston. (Ex. A–88.) The ship-side rate from this territory to

Houston and Galveston was 83.5 cents per 100 pounds; the city-delivery rate, 80 cents, a difference or spread of 3.5 cents. (R. 693, 817.) The difference between the ship-side and city-delivery rates from points in Oklahoma, Arkansas and Louisiana to Houston and Galveston, was usually 3 cents per 100 pounds. (R. 693–695, Ex. A–73.)

It was the uniform practice of the carriers to assess the ship-side rates upon all cotton consigned to the ports under through export bills of lading or under domestic bills of lading marked "for export," or which, moving in under domestic bills of lading, was declared for export after arrival at the port. Upon all other cotton moving to the ports the lower city-delivery rates were assessed. (R. 199, 200, 204.)

The preponderance of the cotton moving through the Texas ports originates in Texas. Of the 6,375,302 bales delivered at Houston and Galveston during the 1924–1925 shipping season 5,229,183 bales originated in Texas. (Ex. A–189, page 2.) The movement of cotton from points in Texas to Texas ports may under some circumstances be intrastate commerce, subject to the jurisdiction of the Railroad Commission of Texas, *Atlantic Coast Line R. R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, and, under other circumstances, may be interstate or foreign commerce, subject to the jurisdiction of the Interstate Commerce Commission. *Southern Pacific Terminal Co.* v. *I. C. C.*, 219 U. S. 498; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227

U. S. 111. Where the cotton moves to the port on a bill of lading showing a foreign or interstate destination, and the cotton moves through without the intervention of the owner, there is, of course, no doubt concerning the jurisdiction. But where the cotton is consigned locally to the port, the question is doubtful, depending upon whether it is the intention of the parties to ship it beyond in interstate or foreign commerce. But for the purpose of this case it is unnecessary to determine this question of jurisdiction for the reason that the domestic rates on cotton prescribed by the Railroad Commission of Texas which are applicable if the transportation is intrastate commerce are filed with the In terstate Commerce Commission and thus made equally applicable if the transportation is interstate in character. In short, the same rate is applicable whether this transportation be regarded as intrastate on the one hand, or interstate or foreign on the other. (R. 45–46, 190.) The order of the Commission is expressly restricted to "export and interstate domestic rates . . ." (R. 81.)

Cotton, after being harvested, is ginned and put in bales weighing about 525 pounds each. These bales have a density of only 11 or 12 pounds per cubic foot and are called flat or uncompressed cotton. (R. 172.) Most cotton when first tendered to the railroad for shipment is in this condition. It is the railroad's practice to stop such cotton at the first compress point along the route and have it compressed. The compression which there takes

place is usually to a density of about 22.5 pounds per cubic foot; and this is called standard compression. (R. 172.) The carriers insist upon compression in transit as a car conservation measure because compression greatly reduces the size of the bale and two or three times more compressed cotton than uncompressed cotton can be loaded into a car. (R. 70, 700.) The normal rate of the railroad includes this compression service. When cotton is tendered to a carrier for shipment in a compressed state the rate is usually 18 cents per 100 pounds lower than the normal rate. If the shipper insists upon the cotton going through uncompressed the rate is 12 cents per 100 pounds higher than the normal rate. (R. 70, 801; Ex. A–73.) All rates mentioned in this brief are the normal rates.

When cotton is to be shipped by vessel it is usually compressed to a density of about 32 pounds per cubic foot. This is known as high-density compression. The rates of the ocean vessels are usually lower on cotton compressed to a high density than to standard density, and the difference in the rate is a little more than the cost of the high-density compression. (R. 70, 221, 232, 616.) A few high-density compresses are located in the interior, but most of them at the ports. (R. 186.) No advantage is to be gained so far as the railroad rates are concerned by compressing the cotton to high density. (R. 171.)

"Concentration" is a feature of the cotton trade. Cotton ordinarily is sold to spinning mills in lots

of 100 bales, or multiples thereof. In purchasing cotton the average spinner insists that the cotton be of uniform grade and staple. As there are many grades of long-staple and short-staple cotton, it is frequently necessary to pick over many bales to find 100 of a common quality. Differences in quality arise from the condition of the plant or damage from weather or other forces. The cotton produced in any one community is not of even-running grade and staple. Consequently it is necessary that facilities be provided where cotton can be concentrated for the purpose of "merchandising," i. e., grading and assorting into lots of the quality and quantity demanded by the ultimate purchasers. (R. 69, 294, 572, 698-700.) There are thousands of points in the southwest from which cotton may be shipped. To provide facilities for the assembling of cotton at each of these numerous points would be a tremendous expense, and would not meet the requirements, as too great a time would be required in which to accumulate 100 bales of even-running grade or staple. As a matter of expediency and economy, a number of points conveniently located are selected to which the cotton moves from the various points of origin and in this way markets are provided and facilities are established for assembling, handling, protecting, and shipping cotton. (R. 699.)

Those engaged in this activity are called concentrators. There are numerous concentrators in the interior of the southwest (R. 698), and they are

herein termed "interior" concentrators. Many concentrators also are in business at the port cities. Those originally there constructed their plants upon locations back from the water front, and they are herein called "uptown" concentrators. Recently concentrators have erected facilities upon the water fronts at Galveston, Houston, and New Orleans. These cotton merchants are herein called "water-front" concentrators. All three groups are competitors, each with the other, in the buying and selling of cotton. Competition is keen and margins narrow. (R. 212, 225, 294, 298, 732.)

The concentration-in-transit privilege is one accorded by the carriers, the essential feature of which is that cotton assembled at concentration points may be reshipped to the ports at the through rate from original point of shipment. (R. 70, 225.) Concentration-in-transit, like creosoting-in-transit and other transit privileges, " rests upon the fiction that the incoming and the outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination." *Central R. R. Co.* v. *United States,* 257 U. S. 247, 257; compare *United States* v. *L. & N. R. R. Co.,* 235 U. S. 314, 324–325; *A., T. & S. F. Ry.* v. *United States,* 279 U. S. 768.

All rates involved in this case carry this privilege with them. (R. 224, 663, 787, 815; Ex. A-118.) The privilege is accorded at interior points where concentrators have their facilities; it is also accorded

to the port concentrators, both uptown and water front.

A second concentration-in-transit privilege is also permitted under all these rates, but in that event an extra charge of 3.5 cents per 100 pounds is added to the through rate. (R. 47, 664, 666, 703, 786–787.)

Prior to 1921, all the cotton warehouses, compresses and facilities at the ports were located back from the water front. There were then no water-front concentrators and there were but two competing groups, the uptown and the interior concentrators. (R. 324–325; 783–784.)

The average cost of moving the cotton from the uptown warehouses to the wharves, whether it was moved by railroad car in switching service, by dray, or by barge, was 3.5 cents per 100 pounds. In view of this fact, primarily, the railroads fixed the ship-side rate at a figure 3.5 cents per 100 pounds higher than the city-delivery rate. (R. 41, 331–332, 797.)

This adjustment was made in special reference to the situation at Galveston, for at that time the Houston Ship Channel was in its infancy and Houston had not developed as a port of importance. (R. 417–418.) In Galveston there are 15 uptown cotton warehouse and compress facilities (R. 204) and all used drays to move their cotton to the piers of the Galveston Wharf Company, the average cost of which was 3.5 cents per 100 pounds, or 18 cents a bale of 525 pounds (R. 234). A shipment of cot-

ton forwarded from any point in Texas common-point territory, e. g., McKinney, Texas, to Galveston, consigned direct to the wharf for immediate transshipment by vessel, would be charged the ship-side rate of 83.5 cents. A shipment of cotton from McKinney consigned to an *uptown* concentrator at Galveston would be charged the city-delivery rate of 80 cents. (R. 235.) When the uptown concentrator later exported that cotton he had to pay the cost of transferring it to ship-side, 3.5 cents, and this, added to the city-delivery rate of 80 cents, made his total cost of transportation to ship-side 83.5 cents (R. 235), the same as the rate paid by the interior concentrator upon his shipment forwarded direct to ship-side (R. 196–197; 233).

Obviously, if the city-delivery rate were higher than 80 cents while the ship-side rate remained 83.5 cents (the drayage charge being fixed at 3.5 cents), the uptown concentrator would have been at a disadvantage in his competition with the interior concentrator, and conversely, if the city-delivery rate were lower than 80 cents the uptown concentrator would have had an advantage and the interior concentrator would have been at a corresponding disadvantage. This practice of making the ship-side rates higher than the city-delivery rates by an amount sufficient to equalize the total transportation costs paid by the uptown and interior concentrators was approved by the Commission in *Louisiana Cotton*, 46 I. C. C. 451, decided July 11, 1917,

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and *Galveston Commercial Asso. et al.* v. *A. & V. Ry. Co.*, 77 I. C. C. 388, decided February 2, 1923.

Another factor entering into this rate situation was the intrastate rate fixed by the Railroad Commission of Texas. Its rate scale on cotton ranged from 28 cents for distances of 20 miles and less to 80 cents for distances of 211 miles and over, this latter rate being the maximum for any haul in Texas for a distance of over 211 miles. (Ex. A–88.) This 80-cent rate is the typical rate heretofore referred to. The carriers realized that the ship-side rate to the ports could not, as a practical matter, be maintained at a figure more than 3.5 cents over the Texas Commission rate, the 3.5 cents representing the drayage cost, because if the ship-side rate were more than that figure, the cotton would all move on domestic bills of lading, and at the intrastate rate. The Texas Commission rate of 80 cents, plus the 3.5-cent drayage cost, held the ship-side rate to 83.5 cents. (R. 331–332, 797.)

So long as all the warehouses and compresses at the ports remained back from the water front, the maintenance of ship-side rates higher than the city-delivery rates by an amount not more than the cost of moving the cotton from the uptown facilities to ship-side kept the interior and uptown concentrators upon a basis of transportation equality and all concerned were satisfied with the arrangement. (R. 252, 784.)

But commencing in 1921, disturbing influences were injected into the situation through the placing

of high-density compresses on the piers of the Galveston Wharf Company, followed by the erection of large warehouses and compresses on the water front at Houston. (R. 42, 174, 251–252, 254, 258.) The high-density compresses at Galveston, six in number, were constructed by the Shipside Density Compress Company, and they are located on six of the piers. (R. 175, 207–208.)

The Houston water-front facilities were erected by appellants Anderson, Clayton & Company, Weatherford, Crump & Company, and Alexander Sprunt & Son, Inc., and each formed a subsidiary compress company to operate those facilities. (These subsidiary companies, Houston Compress Company, Turning Basin Compress Company, and Ship Channel Compress Company are also appellants here.)

These plants are located upon the Houston Ship Channel virtually within reach of the ship's tackle, or, at most, only a few feet from it. (See photographs, Exs. A–62, A–63, A–129, pp. 1 and 2; R. 463, 516, 711.)

From the beginning the city-delivery rates were applied to the water-front plants upon all cotton consigned to them on domestic bills of lading not marked for export and not bearing any indication of an intention to export immediately. (R. 199–201; 710.) These plants are within the established switching limits of the port cities and the carriers followed the same practice in reference to the application of the rates on shipments consigned to them

that they followed respecting other shipments to industries within the switching limits (R. 239), which practice has already been stated.

Two of the Houston water-front plants, the Houston Compress Company (subsidiary of Anderson, Clayton & Company) and Ship Channel Compress Company (subsidiary of Alexander Sprunt & Son, Inc.) own and operate wharves which are part of the warehouse structure. (R. 463, 477, 516–517.) The situation in respect of the plant of the Houston Compress Company was taken as typical of the water-front plants and developed in detail.

This plant, known as the Long Reach Plant, consists of a warehouse, with facilities for compressing to high density, concentrating, and storing cotton, and a wharf long enough to provide berths for four ocean-going vessels. (R. 282, 464, 470, Ex. A–33.) The greater portion of the cotton it handles is that of Anderson, Clayton & Company (R. 467), but nevertheless it holds itself out as a public concentrator and warehouseman. (R. 282–283, 463, 466.) It is also engaged in a general wharf and dockage business. (R. 287, 468.)

Cotton consigned to that plant on a domestic bill of lading is charged the city-delivery rate. (R. 255.) Cotton consigned to the same plant on an export bill of lading, or on a domestic bill of lading marked for export, is charged the ship-side rate which is 3 or 3.5 cents higher than the domestic rate. (R. 224, 663, 710.)

The beginning of the proceedings before the Commission

The proceedings before the Commission in this case were commenced by one of the Houston waterfront operators—Weatherford, Crump & Company. They complained of the "two-rate" adjustment as it existed at Galveston. They were affected by that adjustment because they often shipped consignments of cotton from their Houston plant to Galveston by rail for export to a foreign country by a particular vessel berthed at Galveston.

That complaint (No. 13991) was filed June 20, 1922, and alleged that complainants merchandised or compressed cotton at their plant in Houston, and then reshipped it under concentration-in-transit provisions to Galveston for export, the through rate from original point of shipment to Galveston being applicable under the transit provisions; that such cotton moved on through export bills of lading, and that the higher export rates from original points of shipment were assessed, whereas, on cotton consigned to the compresses located on the piers at Galveston, moving under domestic bills of lading, the lower city-delivery rates were assessed. The complaint further alleged that the service rendered by the carriers in the transportation of shipments of cotton concentrated at complainants' Houston warehouse, and then forwarded on export bills of lading to Galveston was substantially similar to that afforded in the transportation of shipments from the same point of origin, consigned to the

higher than the domestic rates by an amount equal to the wharfage. In other words, the Commission found that the export and domestic rates should be equalized except for the wharfage. (R. 49.)

The Commission said that this finding was not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching at the ports. (R. 49.) This matter of drayage absorption is discussed more fully hereinafter.

The reasonableness *per se* of the rates had not been in issue and the Commission said that the equality of treatment which it ordered in the rates to the Texas ports might be effected by readjustments which would preserve but not increase the carrier's revenues. (R. 49.)

The order (R. 52–53) issued with and as part of the report required that the carriers readjust their rates so as to remove the undue prejudice and preference found, but did not specify the particular rates which should be established to accomplish that result.

The rehearing

Disagreement among interested parties as to what equalized rates would meet the Commission's suggestion as to revenue maintenance resulted in the carriers being unable to publish new rates within the time specified in the Commission's order, and the Commission, upon the request of the parties, postponed its effective date. Meanwhile, in-

terests at Houston had filed petitions asking that the proceedings be reopened and broadened to cover practices pertaining to the concentration and compression of cotton at interior points. It was alleged in those petitions that subsequent to the hearings upon which the original report was predicated changes had taken place in the physical arrangement of certain warehouses and compresses at the ports and in the methods of handling cotton at those facilities and, further, that certain practices of the carriers at interior points were unduly preferential of interior compresses and warehouses and unduly prejudicial to warehouses and compresses at the ports. Petitions were also presented to the Commission by other interests asking that the proceedings be reopened. Another petition, filed by the respondent carriers, set up that compliance with the Commission's order, coupled with maintenance of existing revenues, was impossible unless the Commission's order in No. 11965, *Galveston Commercial Asso.* v. *Alabama & Vicksburg Ry. Co.*, 77 I. C. C. 388, was modified. (R. 57.)

In response to these various petitions the proceedings were reopened, the issues broadened, and they were further heard on the following questions (R. 57–58):

> (1) Whether changed conditions, or conditions which existed at the time of the previous hearings, but which had not been developed on the record, justified any modification of the Commission's finding and order;

(2) Whether the Commission's findings should be extended to apply to ports other than those covered by the Commission's prior order;

(3) What rates should be established to conform to the Commission's findings; and

(4) What services were accorded and what charges, payments, or allowances were made by respondents in connection with the handling of cotton at interior points, including payments for compression, and whether any of such services, charges, payments, or allowances, result, or might result, in unjust discrimination or undue preference or otherwise violate any provision of the Interstate Commerce Act; and what changes, if any, should be made in such services, charges, payments, or allowances.

No. 11965, *Galveston Commercial Asso.* v. *Alabama & Vicksburg Ry. Co.*, was also reopened and set down for hearing with Nos. 14940 and 13991, as to what, if any, modification should be made in the order in that case (No. 11965) to permit compliance with the Commission's findings in Nos. 14940 and 13991. (R. 57.)

Extensive further hearings were held at Houston, New Orleans, and Dallas, in April, May, and June, 1926, at which the various port and interior interests and the carriers were exhaustively heard. (R. 387–933.)

On April 4, 1927, the Commission issued its report on rehearing, *Application of Rates on Cotton to Gulf Ports*, 123 I. C. C. 685. (R. 55–79.)

The Commission adhered to its former finding that the two-rate plan was discriminatory. It said (R. 61):

> Careful consideration of the situation as developed upon the whole record convinces us of the correctness of our former findings that the existing adjustment of interstate rates on cotton to the Texas ports, from the States covered by the proceeding, gives to the water-front warehouses and compresses, and shippers using such facilities, an unnatural and unlawful preference, and subjects the uptown and interior warehouses and compresses, and shippers using such facilities, to an unnatural and unlawful disadvantage to their undue prejudice.

The Commission further found that, "for the purposes of this case, a fair and reasonable basis for equalizing the city-delivery and shipside rates will be to increase the city-delivery rates one cent per 100 pounds and reduce the shipside rates, exclusive of wharf or pier terminal charges equivalent to two cents per 100 pounds, to the basis of the increased city-delivery rates." (R. 66–67.)

The Commission further found that this basis of equalization should be applied from all of the states covered by the investigation to both the Texas and Louisiana ports, except that this finding should not be construed as condemning the practice of the lines serving New Orleans of maintaining that port on a parity with Galveston and Houston in the mat-

ter of export rates on cotton from Oklahoma and Northern Texas. (R. 64, 67.)

"Furthermore," the Commission said, "the above finding is without prejudice to further inquiry into the reasonableness of the above rates in connection with other cases now pending." (R. 67.)

The Commission further found that the regulations and practices of the carriers pertaining to the concentration and compression of cotton at interior points did not result in undue prejudice to warehouses or compresses located at the ports, or to shippers using such facilities, or to unduly prefer warehouses or compresses located at interior points, or shippers using such facilities. (R. 56, 79.)

Investigations similar to those conducted by the Interstate Commerce Commission were instituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the intrastate rates in those states. When the Interstate Commerce Commision reopened its investigation the Texas Commission did likewise and the further hearings were held jointly by the two Commissions, to the end that no disparity should be brought about as between the interstate and intrastate rates. (R. 44-45; 59.)

It may be stated, merely as information, that the Texas Commission increased the intrastate rates to the Texas ports 1 cent per 100 pounds. The opinion and order of the Texas Commission are reproduced in its 36th Annual Report (1927), pages 426-429.

The order

With its report and as a part thereof, the Interstate Commerce Commission issued the order which is here in question (R. 80–81), the body of which reads as follows:

> *It appearing,* That on February 2, 1923, the Commission entered its report and order in No. 11965, and on June 23, 1925, entered its report and order in Nos. 14940 and 13991;
>
> *It further appearing,* That by order dated dated December 28, 1925, the Commission reopened the above-entitled proceedings for further hearing;
>
> *It further appearing,* That full investigation of the matters and things involved has been had, and that the Commission has, on the date hereof, made and filed a report on rehearing containing its findings of fact and conclusions thereon, which said report and the reports and orders of February 2, 1923, and June 23, 1925, are hereby referred to and made a part hereof;
>
> *And it further appearing,* That the Commission has found in said report on rehearing that the relationship between interstate rates on cotton from points on the lines of respondents and above-named defendants in Oklahoma, Arkansas, Texas, and Louisiana (on and west of the west bank of the Mississippi River) for city deliveries and shipside deliveries at Galveston, Houston, Texas City, Beaumont and Port Arthur, Tex., and New Orleans, La., including sub-port of any of said ports, is unduly preferential of ware-

houses and compresses located on the water front at such ports, and shippers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities, and that the undue prejudice and preference should be removed by increasing the present city-delivery rates 1 cent per 100 pounds and reducing the shipside rates, exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city delivery rates;

It is ordered, That the said orders of February 2, 1923, in No. 11965, and of June 23, 1925, in Nos. 14940 and 13991 be, and they are hereby, modified to the extent necessary to permit of the readjustment of said rates in the manner indicated in said report.

It is further ordered, That respondents in No. 14940, named in appendix hereto, be, and they are hereby, notified and required to cease and desist, on or before June 16, 1927, and thereafter to abstain, from practicing the undue prejudice and preference found in said report to exist.

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, on or before June 16, 1927, upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, in the manner indicated in said report, export and

interstate domestic rates, charges, regulations, and practices, which will remove the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

The effective date of the order, June 16, 1927, was postponed by the Commission until July 16, 1927.

Proceedings in court below

July 1, 1927, bill of complaint (R. 3) was filed by the water-front interests to enjoin the Commission's order, *Alexander Sprunt & Son, Inc., et al.* v. *United States et al.,* No. 310. A bill was also filed by some of the railroads against whom the order was directed, *Texas & New Orleans Railroad Company et al.* v. *United States et al.,* No. 311, but they have not appealed. (See severances, R. 157–159.) The Manchester Terminal Corporation, which had recently constructed a water-front plant upon the Ship Channel in Houston, intervened in No. 310 in support of the bill (R. 114–116), as did also the New Orleans Joint Traffic Bureau (R. 127) and the Houston Cotton Exchange and Board of Trade (R. 129). The Arkansas Cotton Trade Association, the Texas-Oklahoma Compress Association, the Oklahoma State Cotton Exchange, the Galveston Cotton Exchange and Board of Trade, and the Galveston Chamber of Commerce intervened in opposition to the bill. (R. 83, 85, 87, 88, 96, 110.) The United States and the Inter-

state Commerce Commission answered. (R. 101, 103.)

The case was heard July 12 and 13 by the specially-constituted District Court upon the application for a temporary and permanent injunction. It was stipulated by all parties that the cause be submitted on final hearing. (R. 166.) On July 13, an order was issued granting an interlocutory injunction suspending the enforcement, operation, and execution of the order of the Commission until the further order of the court. (R. 130.)

December 5, 1927, the court rendered its opinion (R. 131–141) finding that no ground for injunctive relief existed, that the temporary injunction theretofore issued should be recalled, and that the bills should be dismissed for want of equity. Final decree was entered accordingly on the same date. (R. 142.)

Shortly thereafter, rates revised in the manner indicated in the Commission's order were made effective and have since been in force.

SUMMARY OF ARGUMENT

I. The Commission's finding of undue preference and undue prejudice is supported by substantial evidence. The line-haul service under the export rates is indistinguishable from that performed under the domestic rates, and the privileges of compression and concentration in transit granted under either are the same, as are the unloading services and allowances. The demurrage regula-

tions under the export rates are more liberal than under the domestic, but the average detention of cars containing export shipments is but little greater than the free time allowed on cars containing domestic shipments. On other export commodities such as grain, the more liberal demurrage regulations prevail, but the same line-haul rates apply on export shipments of that commodity as apply on domestic shipments to the gulf ports. On export traffic generally to the gulf ports, aside from cotton, the line-haul rates are generally the same as on domestic traffic to the ports. Generally, where domestic and export rates are different, the export rate is lower, but on cotton it is higher.

The carriers do not undertake so to expedite the movement under the export rates. There is no evidence of a tariff provision obligating the carriers to so expedite. The crop moves fast, whether it be domestic or export.

If, in particular respects there is additional expense incident to export traffic, there are offsetting economies, such as heavier car loading and less switching at the ports.

The uptown concentrator, drawing his cotton from the interior and reshipping to the wharf, must pay the higher ship-side rate, while the water-front concentrator pays only the lower city-delivery rate. The interior concentrator is subjected to a like discrimination. In the case of a second concentration the discrimination is greater.

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Carrier officials testified there was no difference in the cost of the service as between two shipments—one export, the other domestic—both delivered to a water-front facility, and they knew of no transportation reason for charging 83.5 cents on one and 80 cents on the other.

The Commission considered all the testimony of record, concluded that the service performed under the export and domestic rates was substantially the same, and found that the disparity in the rates resulted in preference and prejudice that was undue.

In making its determination the Commission properly considered all relevant transportation conditions and was not bound to base its finding solely upon comparisons of cost and value of service.

II. The Commission's finding of discrimination is based upon consideration of transportation conditions only, as is shown by the reports. The Commission rejected several contentions advanced by appellants which sought a determination upon matters not connected with the transportation.

The appellants' advantage came to them as a result of the artificial rate adjustment and not because of any natural advantage of location. The Commission, expressly disclaiming power to equalize, by means of rates, natural or commercial advantages of location, found that such a situation is not presented here. The position of appellants' plants upon the water-front does not entitle them to a better rate than their competitors, but gives

them the advantage of what is in effect a second free concentration-in-transit privilege, which the Commission did not disturb. It denied a contention that this advantage should be neutralized by granting a second free concentration at the ports to appellants' uptown competitors.

III. The ruling of the Commission with respect to allowances to port warehouses for drayage costs paid by them to the ship side when such drayage is performed in lieu of switching service which the carriers are under duty to render was proper. The expression of opinion by the Commission that the movement of cotton by the water-front facilities from the warehouses to the adjacent wharves or piers operated as a part of or in conjunction with such warehouses is not a substitute for rail transportation but is an intraplant movement for which allowances may not lawfully be made, is sound upon the facts shown. In any event, as no order on that was made by the Commission, it is not properly a subject for injunction.

IV. The order of the Commission prescribing the specific manner in which the rates should be readjusted so as to remove the discrimination found to exist is authorized by Section 15 (1) of the Interstate Commerce Act. The record before the Commission fully warranted the prescription of the rate readjustment which the Commission found reasonable to accomplish that end. No objection was noted by appellants or any other party to the proposed action. The rates found by the Commis-

sion to be "a fair and reasonable basis for equalizing the city-delivery and ship-side rates" were fixed within the spread between the ship-side and city-delivery rates previously in effect.

ARGUMENT

I

THE COMMISSION'S FINDING OF UNDUE PREFERENCE AND UNDUE PREJUDICE IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Section 3 of the Interstate Commerce Act "forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; what is such undue or unreasonable preference or advantage is a question not of law, but of fact." *Pennsylvania Co.* v. *United States,* 236 U. S. 351, 361. The Commission's finding of this fact, when "supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law." *Virginian Ry.* v. *United States,* 272 U. S. 658, 663. "But if the determination of the Commission finds substantial support in the evidence, the courts will not weigh the evidence nor consider the wisdom of the Commission's action." *Chicago, R. I. & P. Ry. Co.* v. *U. S.,* 274 U. S. 29, 33–34, *Assigned Car Cases,* 274 U. S. 564, 580.

Under these authorities we need review the voluminous record only to the extent necessary to indicate that the Commission's finding of discrimi-

nation is supported by substantial evidence. Some of the evidence has already been adverted to, in the statement of the case.

Counsel for appellants admit the fact, clearly shown by the record, that "the line haul under export rates is indistinguishable from that performed by the carriers under local rates." (Brief, p. 3.) This admission enables us to come at once to a comparison of the privileges and allowances granted under the respective rates.

Most of the controversy centers around the concentration-in-transit privilege. But, as in the case of the line haul, the export and domestic rates are indistinguishable in this regard, for under both rates this privilege is available. (R. 597, 598, 663 et seq.; R. 224 et seq.; R. 815 et seq.; R. 787; Ex. A–118.) Cotton concentrated at an interior point may be shipped to the ports for export at the through export rate from original point of shipment. Similarly, interior concentrated cotton may be shipped to a port merchant (uptown or waterfront) at the through domestic rate. But it is not necessary that the concentration privilege be taken at an interior point; it is equally available at the ports (R. 669); in fact, the carriers make no distinction as to the point along the route where the stop may occur (R. 589, 663).

For example, cotton originating at McKinney, Van Alstyne, and other points on the Southern Pacific north of Dallas, all in Texas common-point territory, could be concentrated at Dallas and re-

shipped to Houston or Galveston at the export rate of 83½ cents. It could be concentrated at Dallas and shipped to a waterfront warehouse at Houston or Galveston at the domestic rate of 80 cents. It could be concentrated at an uptown warehouse at Houston and reshipped to a wharf at Houston at the export rate of 83½ cents. It could be concentrated at an uptown warehouse at Houston and reshipped to Galveston at the export rate of 83½ cents. It could be concentrated at a water-front warehouse at Houston and reshipped to a nonadjacent wharf at Houston at the export rate of 83½ cents. It could be concentrated at a water-front warehouse at Houston and reshipped to Galveston at the export rate of 83½ cents. It could be concentrated at an uptown warehouse at Galveston and reshipped to a wharf at Galveston at the export rate of 83½ cents. (R. 663-664.)

Under either the export or domestic rate, a second concentration in transit may be had, but in that event a charge of 3½ cents in addition to the through rate is assessed. (R. 791.)

In short, the same terms, conditions, rules, and regulations respecting concentration in transit apply under the domestic rate as under the export rate. (R. 597, 598, 663, 664.)

Appellants draw comparisons as between the services rendered upon cotton given first concentration at the uptown warehouses, on the one hand, and cotton moving to the water-front warehouses which has had interior concentration, on the other,

and argue that inasmuch as there is no evidence "of any transportational distinction between these export port concentration stops and shippers' second stops on cotton movements generally," the Commission's finding of undue prejudice is arbitrary. But the privilege of first concentration at the port is equally available to appellants. (R. 483.) It is open to them on all cotton exported from Houston over wharves other than their own (R. 68, 461, 462, 517), on all cotton reshipped by them to Galveston or New Orleans for export (R. 178, 179, 181, 348, 491, 494, 669), and on all cotton reshipped to the Carolina and other southeastern mills (R. 462, 511, 611, 902). As to all such movements appellants occupy the same relative position as the uptown concentrators. It is true that concentration increases the car loading beyond the transit point; and it is also true that this advantage to the carrier varies in degree depending upon the point along the route where the concentration takes place, and that this advantage is present, perhaps, in a smaller degree where first concentration takes place at the port. Yet the fact remains that all these cotton rates apply to "any quantity" (R. 615, 699, 808) and are applicable whether the car loading is heavy or light.

The concentration privilege was not granted by the carriers because of the increased car loading which results, but because the privilege is a commercial necessity. Carrier competition also undoubtedly played its part. The carriers granted

the privilege to the interior concentrators, wherever located, regardless of the degree of difference in the distance from their plants to the ports, and in order to avoid discrimination against the port merchants (uptown and water front) they were obliged to extend the privilege to them. (R. 806.) It was not the position of the railroads in this case that there should be a charge for first concentration at the ports. (R. 806.) The privilege was voluntarily granted by them years ago. (R. 343.) The Commission did not disturb the privilege; neither did it hold that it should be withdrawn or that it should be denied. There was no occasion for a finding of fact as to benefits accruing to the carriers from first concentration at the ports.

Under both the export and domestic rates the carriers stand the expense of unloading the cotton from the car. In the case of export shipments the carriers hire stevedores to perform this service. (R. 812.) In the case of the domestic shipments, the actual unloading is performed by the consignee and the carriers make an allowance to him of 1 cent per 100 pounds for the service. (R. 678, 835.) But the carriers will absorb unloading costs only once upon the same shipment. Upon cotton delivered to a port warehouse (either uptown or water front), the carrier will pay for the unloading, provided their rail service ends with such unloading. If a concentration privileges is taken by the port warehouse, under which the cotton is

reforwarded to ship side, the carriers will haul it to ship side, and there have it unloaded at their expense, but in that event will not absorb the unloading cost at the warehouse. (See R. 679–680, and tariff provisions, Ex. A–122, "Original Exhibits," p. 170–171.)

The compression rules and regulations apply indifferently under both rates. (R. 797.)

Thus, as to concentration in transit, unloading, and compression in transit, the two rates are indistinguishable.

Appellants lay great stress upon the greater liberality of the demurrage rules applicable on export shipments, but the average detention of cars containing export shipments is but little greater than the free time allowed on cars containing domestic shipments. (Exs. A–186; A–187; AX.)

There was evidence that although on export *grain,* for instance, 10 days free time is allowed at the ports and on domestic traffic 2 days, the *same* line-haul rates apply to both domestic and export movements of that commodity; that on export traffic generally to the Gulf ports, aside from cotton, the line-haul rates are generally the same as on domestic traffic, regardless of the fact that the export traffic has greater free time at the port; that generally where there is a difference between the domestic and export rates the export rate is the *lower,* while in the case at bar it is *higher;* that the present free time allowance for the unloading of export cotton was fixed by the Interstate Commerce Commission

after years of investigation; and that demurrage rules and charges are not considered by the carriers in fixing the level of rates on cotton. (R. 330.)

Respecting alleged expedited service under the export rates, it appears the carriers do not hold themselves out to accord it, for the record is barren of reference to any tariff publication of the carriers in which they obligate themselves to expedite such movements. Occasionally, when a shipper has reserved space on a particular vessel, he will request the carrier to expedite the movement, but if the carrier does so, it is not because of obligation (R. 242); and if he fails, he is not liable in damages in the absence of a tariff provision, even if he contracts to expedite. To agree with a particular shipper to expedite a shipment at regular rates, where no rate has been published for special expediting, is a discrimination and as such a violation of the Elkins Act of February 19, 1903, c. 708, 32 Stat. 847, and relief on the contract will be denied. *Chicago & Alton R. R. Co.* v. *Kirby,* 225 U. S. 155. It is testified that "the Texas crop moves notoriously fast to its final destination, whether it be domestic or export." (R. 648.)

If, in certain particulars, there is some additional expense to the carriers incident to the carriage of traffic moving on export bills of lading, the record indicates there were offsetting economies, one of which is that such cotton has always been concentrated in the interior. Before cotton is exported it is necessarily merchandised and merchan-

dising requires concentration. As found by the Commission (R. 70), concentration is a substantial advantage to the carriers because "it increases the car loading beyond the transit points, conserves equipment when it is in greatest demand, and thus promotes economy of operation." Another economy incident to the movement of cotton on through export bills of lading is the fact that such shipments require less switching at the ports. When a car arrives there containing several different shipments of cotton consigned to different consignees it is switched to the "mixed shipment platform," unloaded by the carrier, assorted on the platform as to consignees, reloaded into cars and switched to the warehouses of the various consignees. (R. 621–622.) Witness O'Donnell, Superintendent of Houston Terminals of the Southern Pacific lines, testified that there is three times as much switching involved in handling a car to an industry via the mixed platform as there is in handling a car direct to an industry. (R. 851–852.)

Witness Pecot, testifying for the carriers, showed that compressed cotton moving to the ports on domestic bills of lading loaded 63 bales per car on the average and that 43.5 per cent of it had to go to the mixed platforms, whereas interior concentrated cotton loaded 72 bales to the car and only 10.5 per cent of it was rehandled at the mixed platforms. (R. 620–623; Ex. A–104.) Since through export bill-of-lading cotton is cotton which has been concentrated and which usually moves in

fully loaded cars, consigned to the port for direct transshipment, it follows that comparatively few of these cars need be switched, unloaded, and reswitched to and from the mixed platforms.

There was other evidence upon which the Commission could find discrimination. The discrimination against the uptown concentrator is exemplified by the following testimony of the traffic manager of a large cotton dealer (R. 224–225):

> We concentrate most of our cotton at Houston, and Galveston, Texas; some cotton is concentrated at interior compress points. At Houston we have a compress and warehouse * * * located back from the water front. * * * At Galveston we have a large warehouse with two complete compress plants, * * * located back from the water front some little distance. The cotton we buy at interior points moves to Galveston or Houston on local bills of lading at the rate of 80¢ from Texas common points. We have compresses at both places equipped for both high density and standard compression. Cotton that is received at our plant in Houston on the 80¢ rate, must be loaded into box cars, and switched down to the docks. It costs 8¢ to get the cotton from our compress at Houston to shipside. We would get a through bill of lading and by concentration refund, we would get a refund of that 8¢ down to the 83½¢ export rate plus wharfage charge. It would thus cost

> us 83½¢ per 100 lbs. plus wharfage to get the cotton to shipside. * * *
>
> * * * Cotton moves to the Houston Compress Company on the 80¢ rate, to be shipped out from there, and if it costs us more to move our cotton to shipside than it does the Houston Compress Company, we would be at a disadvantage to that extent. The advantage would be the difference in the rate of 83½¢ which we would have to pay to get our cotton to shipside and the 80¢ rate paid by the Houston Compress Company.

The testimony of the Manager of the Transportation Bureau of the Dallas Cotton Exchange explained the discrimination in favor of the water-front concentrators, and against the uptown and interior concentrators as follows (R. 663–664):

> Under the present adjustment, the interior concentrator concentrating his cotton at Dallas, for instance, and reshipping through the Texas ports on a through export bill of lading or on a local bill of lading for export, is compelled to use the inter-state rate of 83½¢. The merchant who concentrates his cotton in a warehouse back of the water front at the port forwards his cotton from point of origin to point of concentration on the Texas intrastate rate of 80¢ and may either deliver the cotton to shipside at cost not to exceed 3½¢ or deliver it to the railroads for delivery at shipside and pay the export rate of 83½¢. In either event, the back from the water front concentrator pays

> a total of 83½¢. The concentrator who gathers his cotton together in a water front warehouse or facility at the port under the current adjustment pays the Texas intrastate rate of 80¢ from point of origin, which, under a ruling of the Texas Railroad Commission applies for local delivery at all points within the ports, including shipside warehouses. The water front concentrator, having no additional cost for delivery to shipside, therefore pays only a total rate of 80¢, giving him an advantage of 3½¢ per 100 pounds over both the concentrator in the interior and the concentrator at back of the water front facilities. It is this 3½¢ advantage that has materially reduced concentration of cotton at interior points and makes it necessary for the discrimination to be removed if the interior facilities are to survive.

In the case of a second concentration, the discrimination in favor of the water-front concentrator is even greater in some instances. (R. 664, Exs. A–117 and A–118.)

Another witness set out the extent of the discrimination in dollars and cents. (R. 673–674, Ex. A–120.)

Many other witnesses testified to the discrimination by reason of the disparity in the rates (Aston, R. 174; Gillespie, R. 179; Westbrook, R. 212; Harriss, R. 215; D. C. Reed, R. 218; Tidemann, R. 221; Toombs, R. 223; Kempner, R. 231, 233, 234; Knowles, R. 235; Thornton, R. 251, 762, 775; West,

R. 321, 323; Drewery, R. 647; Neal, R. 655; Bennett, R. 732).

The discrimination against the uptown concentrators at Houston is well illustrated by the position of the appellant Texas Farm Bureau Cotton Association. That Association handles about 10 per cent of the cotton grown in Texas (R. 58), concentrates it at an uptown warehouse in Houston, and pays the city-delivery rates to such warehouse. Prior to the creation of the water-front facilities this cotton was charged 3.5 cents additional to get to ship-side. Thereafter, owing to the advantage enjoyed by the water-front facilities under the difference between the city-delivery and ship-side rates, the uptown warehouses or compresses, in order to compete successfully with the water-front facilities, were compelled to absorb the cost of switching or draying the cotton to ship-side, thus enabling the Association to get its cotton to ship-side at the city-delivery rates. (R. 64–65, 585.) "In other words," the Commission said, "the creation of the water-front facilities, coupled with the unfair relationship between the city-delivery and shipside rates, has resulted in shifting the burden of handling the cotton from the uptown facility to shipside from the owner of the cotton to the warehouse. Were the uptown warehouse to discontinue the practice of absorbing the cost of handling the cotton to shipside the association would be compelled to pay the higher shipside rates to get its cotton to vessels, or otherwise bear the expense."

(R. 65.) Due to the fact that the Association was thus enabled to get its cotton to ship-side at the *city-delivery rates,* while other interior merchants were compelled to pay the higher *ship-side rates,* the Association opposed any increase in the city-delivery rates.

Under the carrier's interpretation and application of the tariffs, the two rates, differing by 3 or 3½ cents exclusive of wharfage, were applied on like and contemporaneous shipments delivered to the waterfront plants, depending only on the form of the bill of lading. (R. 199–200.) Carrier officials testified there was no difference in the cost of the service as between the two shipments, and that they knew of no transportation reason for charging 83.5 cents on one shipment and 80 cents on another, both of them originating at the same point and carried by the same transportation line to the ship-side facilities of appellants at Houston. (Reed, R. 834; Cummins, R. 807; Brown, R. 526.)

The evidence referred to above is only a small part of the total submitted. Other witnesses denied the existence of discrimination and submitted conflicting testimony. But the weight of the evidence was for the Commission, *United States* v. *Illinois Central R. R.,* 263 U. S. 515, 524; *New England Divisions Case,* 261 U. S. 184, 204; and the courts will not "settle the conflict nor put their judgment against that of the rate-making body," *Interstate Commerce Com'n.* v. *Louis. & Nash. R. R.,* 227 U. S. 88, 93, 98, 100; *Illinois Central R. R.* v. *Interstate*

Commerce Com'n., 206 U. S. 441, 454; *Interstate Com. Com'n.* v. *Union Pac. R. R.*, 222 U. S. 541, 547.

The case at bar is analogous in many of its aspects to the *Los Angeles Switching Case*, 234 U. S. 294, in which the Court upheld an order of the Commission which had the effect of equalizing the rate for all deliveries in the City of Los Angeles of carload freight moving in interstate commerce incidentally to a system-line haul. The Court held that the question whether or not there is at any point an additional service in connection with industrial spur tracks upon which to base an extra charge, or whether there is merely a substituted service which is substantially a like service to that included in the line-haul rate and not received, is a question of fact to be determined according to the actual conditions of operation. "Such a question is manifestly one upon which it is the province of the Commission to pass," the Court said at page 311 and at page 314:

> The argument for the petitioners necessarily invites the court to substitute its judgment for that of the Commission upon matters of fact within the Commission's province. This is not the function of the court. We cannot regard the Act to Regulate Commerce as justifying an increased or extra charge for a substantially similar service and upon the case made it cannot be said that the Commission has overstepped

its authority in forbidding the charge in question as one which was unjustly discriminatory.

In the case at bar the Commission considered the service rendered in the line-haul transportation, the switching and other terminal services performed at the ports, the unloading practices and allowances, the method and manner of compressing in transit, and the various rules and regulations in connection therewith, the intricate workings of the concentration-in-transit privileges, the matter of car loading and conservation of equipment, the history of the rates, the carriers' revenues, port and carrier competition, and a multitude of other important matters intimately connected with the transportation of the enormous cotton crop of the southwest to the various ports and its transshipment therefrom to foreign and domestic destinations.

As in the *Los Angeles Switching Case,* 234 U. S. 294, 312, the case at bar " demanded an appreciation of a variety of details, or minor facts, in order that the ultimate questions of fact could be determined."

The Commission considered all the testimony of record, concluded that the aggregates of the service performed by the carriers under the ship-side rates and under the city-delivery rates were substantially the same and that as the result of the disparity in the rates the interior and uptown shippers were subjected to *undue* prejudice and the

waterfront shippers obtained *undue* preference. *Interstate Commerce Com'n.* v. *Ill. Cent. R. R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Com'n.* v. *D., L. & W. R. R. Co.*, 220 U. S. 235, 251; *United States* v. *Louis. & Nash. R. R. Co.*, 235 U. S. 314, 320; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481; *Houston & Texas Ry.* v. *United States* (*Shreveport Case*), 234 U. S. 342, 347; *Nashville Ry.* v. *Tennessee*, 262 U. S. 318, 322; *Interstate Commerce Com'n.* v. *B. & O. R. R.*, 145 U. S. 263; *Seaboard Air Line Ry.* v. *United States*, 254 U. S. 57, 62.

(a) IN DETERMINING WHETHER RATES ARE UNDULY PREFERENTIAL OR UNDULY PREJUDICIAL THE COMMISSION MAY CONSIDER ALL RELEVANT TRANSPORTATION CONDITIONS AND IS NOT BOUND TO BASE ITS FINDING SOLELY UPON COMPARISONS OF COST AND VALUE OF SERVICE.

Appellant's argument that the order for equal rates seems to be without warrant as a matter of law because the Commission "laid in its findings no basis for an equalization resting on service cost and service value" (brief, p. 45) takes for granted that the question whether undue preference and prejudice exist in a given rate adjustment is to be determined solely by consideration of those two factors. But such is not the holding of this Court. In *United States* v. *Illinois Central R. R.*, 263 U. S. 515, 524, cited by appellants, it was expressly recognized that the Commission was not to make its find-

ing upon consideration of cost and value of the service alone. The Court said:

> To bring a difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates can not be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, *or by other transportation conditions.* (Italics ours.)

This language immediately followed reference to *Interstate Commerce Com'n* v. *Diffenbaugh,* 222 U. S. 42, 46, holding that "the law does not attempt to equalize opportunities among localities," and *Ellis* v. *I. C. C.,* 237 U. S. 434, 445, in which it was stated that "the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference." The purpose of the language in the *Illinois Central case* seemed to be to emphasize that the question of discrimination is to be determined by consideration of transportation conditions rather than matters having nothing to do with the transportation, and cost and value of the service were mentioned as illustrative of transportation conditions properly to be considered and not as an exhaustive statement of the only matters that could lawfully enter into the determination. This is made clearer by subsequent language in the same case. On page 525, the Court said that the innocent character of the

discrimination practiced by the Illinois Central was not established, as a matter of law, by showing that the preferential rate was given to others for the purpose of developing traffic on the carrier's own lines or of securing competitive traffic. "These" the Court said, "were factors to be considered by the Commission; but they did not preclude a finding that the discrimination practiced is unjust. Such was the law even before Transportation Act, 1920. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 218, 220; *Interstate Commerce Commission* v. *Alabama Midland Ry.,* 168 U. S. 144, 167, 175."

In *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission, supra,* known as the *Import Rate case,* at page 219, the Court, referring to section 3 of the Interstate Commerce Act, said that "before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable." See also *Louisville & Nashville R. R.* v. *Behlmer,* 175 U. S. 648, *United States* v. *Louisville & Nashville R. R.,* 235 U. S. 314.

As stated in *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 73 Fed. 409, 419—

> Questions of this kind [unjust discrimination or undue preference] must be treated broadly and practically. The carrier's business is one which involves so many considerations, and the necessity of taking into account so many conditions, that questions of this kind do not admit of any rigidly theoretical rules in their solution.

When we turn to decisions of the Commission, we find that they are in consonance with the court holdings. In the case at bar, the Commission said (R. 75):

> The rates and charges of a railroad can not be based entirely on the cost for each particular character of service rendered. If such were the case, the passenger with baggage would pay more than the passenger without baggage, and rates to large industrial centers would vary dependent upon the character of terminal service employed, including connecting line switching. Cost of service is an important element but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service.

In *Galveston Commercial Asso.* v. *G., H. & S. A. Ry. Co.*, 128 I. C. C. 349, the Commission said (p. 379):

> The fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that it was the intent to give carriers some latitude in

> fixing rates, and that distance or cost of service need not be the sole criterion by which rates shall be measured.

And in *Chamber of Commerce* v. *N. Y. C. & H. R. R. Co.*, 27 I. C. C. 238, it said (p. 242):

> Minor extra services are and should be ignored in an effort to do substantial justice to competing points.

Group or blanket rates largely ignore cost and value of the service, but they are not to be condemned on that ground alone. *Saginaw Board of Trade* v. *Grand Trunk Ry. Co.*, 17 I. C. C. 128; *Southwestern Missouri Millers Club* v. *M. K. & T. Ry. Co.*, 22 I. C. C. 422. Compare *United States* v. *Illinois Central R. R.*, 263 U. S. 515, 518; *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 138; *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 599.

Cost and value of the service are not controlling in making export or import rates. Such rates are usually lower than the corresponding domestic rates. This is because they are, in a sense, proportional rates [1] to and from the ports applicable on traffic destined to or coming from foreign countries. Since the decision in the *Import Rate Case*, 162 U. S. 197, the Commission has recognized in numerous cases the right of carriers to maintain rates on import and export traffic lower than the corresponding domestic rates to and from the ports. In *Louisiana*

[1] See *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 279 U. S. 768.

Sugar Planters' Asso. v. *Illinois Central R. R. Co.*, 31 I. C. C. 311, complaint was made because the domestic rate on molasses from New Orleans to St. Louis was 21 cents per 100 pounds while the import rate was 15 cents. Complainants insisted that as the service rendered in transporting the imported molasses was exactly the same as the service rendered in transporting the domestic article, there could be no lower rate on the import traffic. The Commission said (p. 317):

> It is now too late, however, to discuss that question, as the Supreme Court in *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, known as the *Import Rate case*, held that foreign traffic when carried from the port of entry to final destination and domestic traffic carried from the same port to the same destination are not traffic of "like kinds," and that the service in the one case is not performed under circumstances and conditions substantially similar to those under which the service rendered in the other case is performed, and that therefore the rates on the two kinds of traffic need not be the same. Following that case we have repeatedly recognized the right of carriers to maintain lower rates on import traffic than on domestic traffic, and imported goods move in large volume on special rates which are lower than the rates

charged on goods of the same kind which have not been imported.

To the same effect are *Import and Domestic Rates on Clay*, 39 I. C. C. 132, 139; *Pittsburgh Plate Glass Co.* v. *P., C., C. & St. L. Ry. Co.*, 13 I. C. C. 87; *Import and Domestic Rates*, 36 I. C. C. 389.

Opposing counsel urge that "the local and export rates that are concerned in the present controversy cover two quite different types of service." (Brief, p. 2.) If this is so, it would afford a ground, under the above authorities, for the establishment of *lower* rates on the export traffic than on the local or domestic. In the case at bar the export rate was *higher*. The Commission did not require that it be made lower than the domestic rate, but merely that it be made the same, except that on export traffic the wharfage charge might be added.

We submit, therefore, that it was unnecessary for the Commission to make a specific finding that the cost and value of the service under the export and domestic rates were exactly the same. In its original report the Commission referred to the contention that the transportation costs connected with the carriage of shipments to the ports under through export bills of lading were greater than those connected with domestic shipments to the ports, and that the value of the service to the shipper is greater, and it said (R. 47):

> The record is not convincing that differences in transportation costs will justify the

> continuance of the present difference between the export and domestic rates. Especially is this so when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity.

In its final report the Commission again adverted to this contention (R. 62):

> Those who are striving to have us reverse our previous finding that the rates, exclusive of wharfage charges, should be equalized, contend that the carriers are put to some greater expense in connection with the shipments delivered at shipside because of greater free time allowances and other minor incidental services. That question was discussed in our prior report and nothing developed upon further hearing or reargument convinces us that what we there said is unsound.

And in its final report the Commission said that there is little, if any, more service performed under the export rates than under the domestic, that the service performed is practically the same. (R. 61, 63, 65, 66.) This, coupled with its ultimate finding that the relation of the two rates resulted in undue preference and undue prejudice (R. 61), was sufficient.

II

The Commission's Finding of Undue Preference and Undue Prejudice is Based Solely Upon Consideration of Transportation Conditions

The contention that the whole aim of the Commission was to equalize conditions among exporters of cotton is refuted by its two reports, which show that it based its determination solely upon transportation conditions and that it rejected several contentions, advanced by the appellants herein, which sought to have it decide the question upon consideration of matters having nothing to do with the *transportation* of the cotton.

For instance, the water-front interests urged that they have expended large sums of money for the acquisition of water frontage, and that their uptown competitors had been influenced in the selection of their locations by the fact that sites are cheaper back from the water than on the water front. See original report, R. 46. Of course, the cost of plant sites can never be a proper element to be considered in adjusting transportation rates.

It was also contended before the Commission that there should be a difference in the freight rates because there was a difference in the *cost of cotton concentration* as between the interior warehouses and the water-front warehouses. This contention is explained in the original report (R. 46) as follows:

> They [the water-front facilities] further contend that merchants using interior ware-

> houses now have an advantage over merchants using the port warehouses and that this advantage would be accentuated if the present difference between the export and domestic rates was removed or narrowed. This advantage they explain as follows: Merchants using interior warehouses and shipping under through export bills of lading from these warehouses to foreign destinations pay but one merchandising charge, which amounts to about 25 cents per bale. On the other hand, merchants using the warehouses at the ports purchase a part of their cotton at the interior warehouses and then have it again merchandised at the port at an additional merchandising charge of from 50 to 65 cents per bale. A bale of cotton will weigh in the neighborhood of 500 pounds, and the port merchant therefore pays on this class of cotton from 10 to 13 cents per 100 pounds more for merchandising service than the interior merchant.

The Commission rejected this contention saying (R. 46):

> But this is purely a commercial disadvantage which can be obviated by the port merchant purchasing direct from the country buyer instead of at the interior warehouses *and has nothing to do with the transportation of cotton.* (Italics ours.)

The basis of the Commission's finding of unjust discrimination is a comparison of the *transportation* service performed by the carriers under the ship-side rates with the *transportation* service per-

formed by them under the city-delivery rates. For example, in its final report (R. 61) the Commission said:

> There is little, if any, more service performed in delivering shipments at the wharves and piers under the ship-side rates than is performed in delivering shipments at the water-front warehouses or compresses at the city-delivery rates.

This was made clear by an illustration given in the report of shipments to the plant of the Houston Compress Company, in the following language (R. 61):

> For illustration, at the water-front plant of the Houston Compress Company the wharf parallels the water front and immediately back of and paralleling the wharf are warehouses. There is a switch track on and extending the entire length of the wharf. There are also switch tracks alongside the warehouses. Cotton shipped from an interior warehouse, or ordered switched from an uptown warehouse under transit, for ship-side delivery upon the wharf at this facility, would be charged ship-side rates. But upon similar cotton, originating perhaps at the same point and handled in substantially the same manner by the carriers, delivered upon the sidetracks serving the adjacent warehouses the lower city-delivery rates would be applied. In both instances the carriers would assume the cost of unloading the cotton; in the one case from the car to the wharf and in the other from the car to the receiving platform of the warehouses.

In its original report, the Commission said (R. 48):

> Usually the same rate applies to all industries on the same road within the switching limits of a municipality, and ship-side rates, if higher than the domestic rates, are only enough higher to cover the strict wharf or pier charges, such as handling, from car to ship side, and wharfage. The rates under consideration are not so made. Rather there is a difference of 3.5 cents in the rates not accounted for by the wharf or pier charges. Unloading charges are absorbed on both domestic and export shipments.

Again, in its final report, the Commission said (R 65–66):

> * * * generally speaking, little, if any, greater service is performed by respondents in connection with the transportation of cotton from an inland point to the water front whether it be stopped in transit at an interior point for merchandising or at an uptown warehouse at the port. Respondents will transport cotton once stopped in transit for merchandising at an interior point to a water-front warehouse at the city-delivery rate, but if the cotton is merchandised at an uptown warehouse at the port, instead of at an interior point, and is then ordered to the water front under transit the ship-side rate is charged. The services rendered are practically the same in both instances.

Opposing counsel state the Commission "seemed to think that the appellants' change of location [to the water front] could justify its condemnation of what it had previously approved," and from this argue that the Commission merely sought to "equalize conditions." (Their brief, 71, 76.)

The Commission's approval of the two-rate plan was given in 1917. Prior to that date and back to 1890 the equalized rate basis had been in effect. Its history is described by witness West (R. 324–325), who also said:

> There was no objection to the correction in 1917, because it did not make any difference, since nobody was located at the waterside who could enjoy the local rate without an expense for delivery to the ship. * * * But this year a large and powerful firm decided to locate a warehouse on the waterside where the ships would and could come and take the cotton * * *. That injected a brand new factor into the situation, and made it necessary for us to take some action in reference to the discrimination and that is why we are here.

The fact that the new water-front warehouses were built did not foreclose the Commission from withdrawing its approval of the two-rate plan. But in addition to the building of the new water-front plants at Houston, Galveston, and New Orleans, other substantial changes have taken place, including the construction of new railroad tracks to serve those plants; the performance of a new transporta-

tion service by the carriers in making deliveries to them—the movement thereto of an enormous volume of cotton, all of which has had to be handled through the break-up and classification yards of the carriers at the port cities and switched to the water-front plants, resulting in material changes in the terminal conditions; the application of the city-delivery rates to those plants, and the application of the ship-side rates to the same plants on cotton sent to them for direct transshipment. These developments disrupted the conditions which gave birth to the existing relationship between the ship-side and city-delivery rates, created new competitive conditions, and brought about serious prejudice and disadvantage to uptown and interior concentrators and a corresponding preference and advantage to the water-front facilities.

(*a*) THE APPELLANTS' ADVANTAGE CAME TO THEM AS A RESULT OF THE ARTIFICIAL RATE ADJUSTMENT AND NOT BECAUSE OF ANY NATURAL ADVANTAGE OF LOCATION

Under the facts of record and the Commission's finding the position of appellants' plants upon the water front is not one that entitles them to a lower rate than their competitors. In its original report the Commmission said (R. 48):

> As contended by the water-front facilities, it is not our function arbitrarily to equalize rates in such manner as to deprive any industry of the legitimate advantage of its location.

In many previous cases the Commission had held to the same effect. In *Young* v. *C., I. & L. Ry. Co.*,

89 I. C. C. 428, 436, the Commission said: "We have consistently found that it is not our function to equalize, by means of rates, natural or commercial advantages of location." Similar expressions were made in *Wichita Business Asso.* v. *A., T. & S. F. Ry. C.*, 30 I. C. C. 45, 55; *Pacific Portland Cement Co.* v. *Director General*, 64 I. C. C. 507, 509; *Colorado Fuel & Iron Co.* v. *Director General*, 57 I. C. C. 253, 255, and others. This rule of law had been made clear by decisions of this Court. *I. C. C.* v. *Diffenbaugh*, 222 U. S. 42, 46; *Ellis* v. *I. C. C.*, 237 U. S. 434, 445; *United States* v. *Ill. Cent. R. R.*, 263 U. S. 515, 524.

"But," the Commission said (R. 48), " we do not think that such a situation is presented here."

Thus it appears that the Commission considered and rejected, upon the facts, the contention of the appellants that equalization of the rates would deprive them of the benefit of their location. Appellants do not point out wherein their locations on the water front entitle them to a better rate than their uptown and interior competitors. The cotton originates in the interior and is shipped to the port for further transportation by water, but before reaching the ship side, it is stopped at some intermediate point for concentration, compression, or merchandising. Whether it is stopped in the interior, or at the uptown warehouses at the ports, or at the water-front facilities, the transportation service performed by the rail carriers, the Commission finds,

is practically the same, and should take the same transportation rate. Appellants are not located any nearer to the source of the supply of the cotton, and they, like the uptown and interior merchants, are merely located at an intermediate point along the route.

An industry located at a port, whether it is upon the water front, or back from the water front, has no natural advantage of location in respect of export traffic, but, under an artificial *rate adjustment*, may either enjoy an undue preference, as here, or suffer undue prejudice, as in *New York Cent. & H. R. R.* v. *Interstate Commerce Com'n.*, 168 Fed. 131. There the export rates on wheat and flour from various western points to New York were *lower* than the domestic rates. Wheat milled in transit into flour at intermediate points and shipped to New York for export was charged the lower export rate. Wheat shipped to the mill of the Hecker-Jones-Jewell Company at New York, there milled into flour and exported, was charged the higher domestic rate. The Commission upheld the contention of the miller at the port that such rate adjustment subjected him to undue prejudice and constituted a preference in favor of the interior millers, and ordered the prejudice and preference removed. The court found that the order was within the Commission's power and denied an injunction. In the case at bar the rate adjustment is the converse; the export rate to the port is higher than the domestic rate, and as a consequence the

interior concentrators are subjected to undue prejudice, and the concentrators at the port have an unlawful preference.

Another illustration of an asserted natural advantage of location, which was actually only a *rate* advantage, is the *York Switching Case, United States* v. *Pennsylvania R. R. Co.*, 266 U. S. 191. There, 17 plants located within a certain zone where each of two carriers, by contract, had trackage rights over the lines of the other, obtained the benefit of the flat rate to York. Other industries, not located within the zone, were under certain circumstances required to pay an additional charge. It was contended that any advantages which inured to the industries within the zone were the result of their natural location and were not created by the carrier. In rejecting this contention, the Commission said (*York Mfrs. Asso.* v. *P. R. R. Co.*, 73 I. C. C. 40, 45):

> From the standpoint of carriage, the situation of industries inside and outside the zone is substantially similar. They apparently form parts of one business community. The advantage of the shippers within the zone results from the contract of the carriers and not from a controlling transportation difference.

The Commission held that the arrangement resulted in undue preference of the industries within the zone and subjected the industries without the zone to undue prejudice and disadvantage.

The three-judge District Court found the Commission's order to be erroneous and enjoined it, *P. R. R. Co.* v. *United States,* 295 Fed. 523, 527, saying:

> An industry selecting a disadvantageous location for reasons justifiable to itself has no right to call upon carriers to overcome such disadvantage at their expense, and this is what the industries outside of the zone, so far as the legal situation is concerned, did.

On appeal, the action of the District Court was reversed and the order of the Commission upheld, *United States* v. *Pennsylvania R. R. Co.,* 266 U. S. 191.

The situation in the case at bar is analogous. There are several industries located in certain zones at the ports, the three in Houston being located on the Ship Channel within about a mile of the Turning Basin. They claim that by reason of their location they are entitled to a rate advantage, but the Commission finds that from the standpoint of carriage the situation of industries inside and outside the zone is substantially similar; they form parts of one business community, and the advantage of the industries within the zone results from the rate adjustment and not from a controlling transportation difference.

In the *Arbuckle Case* (*United States* v. *B. & O. R. R. Co.*), 231 U. S. 274, the plant of the Federal Sugar Refining Company was in a *disadvantageous*

location as compared with the location of the Arbuckle plant, because the plant of the former was outside the established lighterage limits of Greater New York, whereas the plant of the latter was within those limits. Switching limits are analogous to lighterage limits. In the case at bar the uptown plants are not in a disadvantageous location as compared with the water-front facilities, because all of them are within the established switching limits of the port cities. In this connection it may be noted the Commission found that (R. 48) "usually the same rate applies to all industries on the same road within the switching limits of a municipality, * * *." (Compare *Los Angeles Switching Case,* 234 U. S. 294.) And the Commission found (R. 49) "that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge * * *."

See also *Chi., R. I. & P. Ry. Co.* v. *Interstate Commerce Com'n.,* 171 Fed. 680, reversed, *Interstate Commerce Com'n.* v. *Chi., R. I. & P. Ry Co.,* 218 U. S. 88; *Nashville Ry.* v. *Tennessee,* 262 U. S. 318.

In the case at bar the water-front facilities had a rate advantage rather than a natural advantage, and the Commission correctly found that it was an unlawful advantage.

(*b*) THOUGH THE LOCATION OF THE APPELLANTS' PLANTS DOES NOT ENTITLE THEM TO A RATE ADVANTAGE, IT GIVES THEM THE ADVANTAGE OF WHAT IS IN EFFECT A SECOND FREE CONCENTRATION-IN-TRANSIT PRIVILEGE. THIS IS NOT DISTURBED BY THE COMMISSION

The water-front facilities, under the Commission's order, will still have an advantage over the uptown facilities in respect of concentration, and this the Commission found to be a lawful advantage derived from their location. In its final report the Commission said (R. 67):

> The tariffs of respondents authorize one free stopping-in-transit for concentration and this may be taken at an interior point or at the port. If a second stopping in transit for concentration takes place a charge of 3.5 cents per 100 pounds is assessed. As pointed out in our prior report, under the existing adjustment of rates, the warehouses at the ports secure what in effect is a second free concentration privilege. Under a one-rate plan such as herein found proper, the uptown warehouses would be deprived of this second free concentration unless the existing transit tariffs are changed. These warehouses contend that unless they are given a second free concentration they will be at a disadvantage as compared with the water-front warehouses in handling cotton previously concentrated in transit at interior points. The advantage which the water-front facility has in the handling of this class of cotton is a natural one derived from its location, and the present record will not

support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port.

Under the rates established pursuant to the Commission's order the water-front warehouses will continue to have the privilege of one free concentration-in-transit. When cotton which has had one such privilege arrives at their warehouses, they may again concentrate it and export it over their own wharves and of course the rail carriers can not assess a charge for this second transportation, because it takes place after their transportation service has ended. But under the Commission's order the uptown warehouses will be in a different position in this regard. On cotton arriving in their warehouses which has had one concentration-in-transit privilege the carriers will apply the through rate from the original point of shipment; then if the uptown warehouse reships that cotton to a wharf and files a concentration claim for protection of the through rate from original point of shipment to the wharves the carriers will add a charge of 3.5 cents per 100 pounds for the second concentration. Thus, the water-front concentrators will continue to have an advantage of 3.5 cents per 100 pounds over the uptown concentrators in respect of all cotton concentrated the second time.

From the two reports, considered as a whole, it is clear that in making its determination that the discrimination was unjust, the Commission applied

the *transportation* standard and was not influenced by matters which have no legitimate relation to the transportation.

III

The Expression in the Commission's Report in Regard to Drayage Allowances is a Correct Interpretation of the Law as Applied to the Facts Developed of Record

In its original report the Commission said that during the cotton-shipping season the grain movement is also heavy, causing cars to be in great demand, and that the carriers found it more economical to pay the shippers a drayage allowance than to use their cars for switching the cotton; and that its finding of undue prejudice and undue preference was not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. (R. 49, see also R. 247, 797, 819.) In its final report the Commission adhered to this view, pointing out that "the allowances are made only on cotton which respondents [carriers] are under obligation to transport to shipside under transit arrangements." (R. 67–68.) Upon rehearing the water-front facilities contended that, if the city-delivery and ship side rates were to be equalized, the carriers should be required "either to discontinue the drayage allowances or make allowances for handling cotton from the water-front warehouses to shipside." (R. 68.) The carriers asked the Commission "to determine whether such allowances may be made at the water-front facili-

ties, and if they may be made what they should be." (R. 68.) In response to this request the Commission expressed the following views (R. 68):

> Upon the present record, we see no reason for condemning reasonable allowances for drayage from the uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable considering the benefit to respondents flowing from such substitute service, and must not be used as a cloak for unlawful preference to shippers furnishing such substitute service. Not all of the cotton handled by the water-front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water-front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging where barging is used as a substitute for switching. But upon cotton delivered to shipside from and by water-front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water-front facility known as the warehouse or compress to that

> part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior or (of) an uptown warehouse to the railroad car or dray is an intraplant movement. No allowances may lawfully be made for these intraplant movements.

We submit that this expression is at most merely a statement of the Commission's views, and can not properly be made a subject for injunction. Although the report is by reference made a part of the order, yet this expression of opinion, or ruling, made in the report is not mandatory, and is in fact not a part of the mandatory order. The order, in the sixth paragraph, requires the carriers to cease and desist from "practicing the undue prejudice and preference found in said report to exist," and, in the seventh paragraph, directs that the carriers shall establish and "maintain and apply, in the manner indicated in said report, export and interstate domestic rates, charges, regulations, and practices, which will remove the aforesaid undue prejudice and preference." No undue prejudice or preference was found in the report to exist by reason of the absorption or nonabsorption by the carriers of drayage charges. Hence, there is nothing in the order, or in the report, which contains any word of command, or any requirement at all, in regard to drayage allowances.

The order neither requires nor forbids the payment of drayage allowances. It would not be a violation of the order if the carriers should insist upon performing by rail movement all transportation service at the terminals which they now permit the shipper to perform by dray, and discontinue the allowances to the shippers.

The question of the legality of the actual and proposed drayage allowances arose collaterally during the course of the proceedings. It was not inappropriate that the Commission, an administrative body charged with the enforcement of the Act (see Section 12 and *I. C. C.* v. *L. & N. R. R.*, 227 U. S. 88, 93) should give the parties the benefit of its interpretation of the statute. The payment of allowances for drayage in lieu of rail movement was inaugurated by the voluntary act of the carriers, under an appropriate tariff provision published before this proceeding commenced. The order does not require that the allowances be continued; the report merely expresses the opinion that their payment is not unlawful. The carriers do not now and have not at any time either before these proceedings commenced or thereafter, paid allowances to the water-front interests for their intraplant movements. The order does not forbid such allowances; the report expresses the opinion that their payment would be unlawful.

Hence, as in *United States* v. *Los Angeles R. R.*, 273 U. S. 299, there appears to be nothing in this

regard which could be enjoined. As stated in that case, at p. 314:

> Its [the Commission's] conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction.

(Compare *American Sugar Refining Co.* v. *Delaware, L. & W. R. R. Co.*, 207 Fed. 733, 740–741 (C. C. A., 3rd), reversing 200 Fed. 652 (D. Ct., Dist. N. J.), and report of Commission, *Allowances for Transfer of Sugar*, 14 I. C. C. 619; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 480.

As to that part of the expression that allowances may not lawfully be made for intraplant movements, even if this be treated as an order it would be purely negative in character, and the courts would not disturb it, for the reasons cogently stated in *Procter & Gamble* v. *United States*, 225 U. S. 282, 292. See also *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 482.

However, should the Court take a different view in this respect, we submit that the Commission's ruling is sound as a matter of law and is not arbitrary. The drayage allowances from the uptown warehouses to ship-side and from the water-front warehouses to nonadjacent wharves are made only where the carriers are under the legal duty of performing that service under their tariffs and this drayage is clearly a substitute for transportation service. But this is not the case in respect of move-

ments of cotton from the water-front warehouses to wharves which are a part of the same structure.

The facts show that this service is an intra-plant service which it is not the duty of the carriers to perform and which the water-front facilities can not in fact permit the carriers to perform, because they must do that work for themselves. The contention that the water-front facilities should have an allowance for this service was advanced by counsel for the Houston Compress Company and most of the testimony in the record related to that company's Long Reach plant.

At that plant an overhead trolley or conveyor system is in operation. It is indicated on the blue print, Exhibit A–33, by broken lines. It runs through the 10 compartments of the warehouse and out to and along the entire length of the wharf. This trolley system is used as an efficient and economical method of moving cotton from place to place in the plant. (R. 468.)

Inbound cars of cotton consigned to the plant are placed by the carrier on the switch track opposite the receiving platform at the rear of the main warehouse. The bales are unloaded and trolleyed to storage space at various parts of the warehouse. (R. 464.)

Outbound cotton, for loading on ships docked at the wharf of the plant, is trolleyed from the warehouse to the space on the wharf designated as the ship's berth. (R. 446–465, 469.) Exhibit A–33 shows the four spaces designated on the wharf as

ships' berths. Sometimes, hand trucks are used to move the cotton from a compartment of the warehouse to the wharf. (R. 476.) To illustrate how close this warehouse is to the water's edge, note the testimony that the distance from the trolley in compartment No. 3 to the trolley in *berth* No. 2—on the wharf—is approximately 50 to 55 feet. (R. 476.)

When all of the cotton which will comprise a ship's cargo has been placed on the wharf in the ship's berth the ship will issue a bill of lading, and it is thereafter responsible for the cotton. The loading of the ship is performed by the ship's labor. (R. 388–393, 400–401, 404–406, 409–413, 466–467.)

On outbound shipments by railroad the same procedure is followed; the cotton is put on the trolley in the compartment where it has been stored and trolleyed to the platform where the cars are spotted. (R. 469–473.)

Unloading of inbound-rail shipments of cotton from cars to warehouse is paid for by the carriers. (R. 487.) Loading of the outbound cotton from the ship's berth into the hold of the ship is paid for by the ship. It thus becomes obvious that the allowance from the railroad claimed by this plant is for moving the cotton from the storage compartments of the warehouse to the ship's berth on the wharf. And the evidence is clear that this service is performed by the overhead-trolley system of the plant, which is in continuous operation at all times (R. 464, 468) performing various movements necessary in the operation of the plant. It is a

service which the plant must perform for itself *and which it could not permit the carrier to perform.* This is shown by the testimony of Scott, Vice President and General Manager of the plant (R. 470):

> We do not permit the employees of the steamship company to come in to Compartments 1, 2, 3, 4, to 10, shown on Exhibit A–33, to pick up cotton and take it in to berths 1, 2, 3, and 4. We do not permit anybody to go into any of our compartments. We would not permit railroad employees to come into storage spaces 1 to 10 and take cotton and put it in berths 1 to 4. We insist on doing that ourselves. I am General Manager of the Compress Company, which includes berth spaces 1, 2, 3, and 4, as well as other parts of the facility.

This service is then, obviously an intraplant service which the railroads are under no duty to perform. It follows that there is no basis for the claim that the railroad should pay for this service.

But, opposing counsel say "if the appellants called for that service, just how the carriers could refuse it is not easy to see." (Brief, page 66.) Where the warehouse and the dock are both parts of the same structure, the carrier can not perform the service without going into the plant. The public duties of a common carrier do not include a service of that character. But even if they did, the carriers here would be precluded from performing it because the warehouse company "would not permit railroad employees" to go into the warehouse.

It is well established that a carrier can not lawfully pay a shipper for performing services not falling within the category of what the law recognizes as *transportation* services, which is another way of saying that the carrier can not make allowances to a shipper for performing any service which it is not the duty of the carrier to perform. This excludes services within the plant of the shipper.

> *General Electric Co.* v. *New York Cent. & H. R. R. Co.*, 14 I. C. C. 237;
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> *New York Cent. & H. R. R. Co.* v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, Court of Appeals of New York, in which an exhaustive review of the cases is given; certiorari denied, 243 U. S. 636;
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> *Crane Iron Works* v. *United States*, 209 Fed. 238, 242, opinion of the Commerce Court sustaining the validity of the Commissioner's order;
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> *Industrial Railways Case*, 29 I. C. C. 212, 230; 34 I. C. C. 596, 601;
>
> *National Malleable Castings Co.* v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537, 542;
>
> *Tap Line Cases*, 234 U. S. 1, 23;
>
> *Los Angeles Switching Case*, 234 U. S. 294.

Opposing counsel cite the *Diffenbaugh Case* and *United States* v. *B. & O. R. R. Co., supra,* (the *Arbuckle Case*) but those cases are not authority for the payment by a railroad to a shipper for performing non-transportation services.

The contention of the appellants as advanced before the Commission was in the alternative, that either they should be granted an allowance for per-

forming the service within their plants or that the drayage allowances to the uptown warehouses should be discontinued. Should the drayage allowances to the uptown warehouses be canceled, appellants would not be benefited, because the allowances are made to the uptown warehouses only for drayage performed in lieu of switching, and the cancellation of the drayage allowances would simply have the effect of requiring the carriers to switch the cotton to the wharves. But that would not benefit the water-front facilities, nor would it injuriously affect the uptown warehouses, and the only result would be to require the carriers to withdraw the cars from the other services where they are needed and use them in this switching service, with the resulting addition to the congestion in the terminal districts.

These principles of law were applied by the Commission to the facts developed, and it is submitted that the Commission's rulings were sound.

IV

The Prescription of the Rate Readjustment to Remove the Undue Preference and Undue Prejudice Was Within the Commission's Authority Under Section 15 of the Interstate Commerce Act

The sixth paragraph of the order reads:

> *It is ordered,* That respondents in No. 14940, named in appendix hereto, be, and they are hereby, notified and required to

> cease and desist, on or before June 16, 1927, and thereafter to abstain, from practicing the undue prejudice and preference found in said report to exist.

Hereinbefore we have dealt with the attacks upon this part of the order, which, standing distinct from the rest of the order, requires removal of the discrimination. We now consider the validity of the seventh paragraph of the order prescribing the specific manner in which the removal shall be effected, reading as follows (R. 81):

> *It is further ordered,* That said respondents be, and they are hereby, notified and required to establish, on or before June 16, 1927, upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, in the manner indicated in said report, export and interstate domestic rates, charges, regulations, and practices, which will remove the aforesaid undue prejudice and preference.

The basis of the removal indicated in the report is as follows (R. 66–67):

> Upon consideration of all the facts and circumstances we are of opinion and find that, for the purpose of this case, a fair and reasonable basis for equalizing the city-delivery and ship-side rates will be to increase the the city-delivery rates 1 cent per 100 pounds and reduce the ship-side rates, exclusive of

> wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city-delivery rates.

Appellants contend that the Commission is without jurisdiction "to raise the rates paid by the appellants in the absence of a valid finding after full hearing that such rates were unjustly and unreasonably low and a valid finding after full hearing that the new rates by which they were to be replaced would be just and reasonable." (Brief, page 52.)

It will be remembered that the Commission's original order (R. 53) required removal of the discrimination, but did not specify how the rates should be readjusted in order to accomplish that purpose. The Commission did suggest, however, in its report, that, inasmuch as the reasonableness of the rates had not been in issue, the readjustment should be such as would neither increase nor decrease the carriers' revenues from the cotton traffic. (R. 49.) This gave the carriers the privilege of readjusting the rates themselves, but instead of doing so they evidently attempted to reach an agreement with the shippers, and, failing that, "invoked the Commission's aid upon the point." (See opinion of court below, R. 141.)

The Commission reopened the proceedings for the purpose of further hearing upon four questions, one of which was:

> What rates shall be established to conform to our findings? (Final report, R. 57–58.)

At the further hearing the carriers serving the Texas ports contended that the rate equalization in order to remove the discrimination should be effected by increasing the city-delivery rates 3 cents per 100 pounds and reducing the ship-side rates, exclusive of wharfage, to the level of the increased city-delivery rates. (R. 64.) This would have resulted in an increase of the Texas common-point rate from 80 to 83 cents for city deliveries and a reduction in the rate from that territory for ship-side delivery of 0.5 cents, from 83.5 to 83 cents, exclusive of wharfage.

For the reasons stated in the report (R. 64–66), the Commission did not approve the carriers' proposed method of equalization, and permitted an increase in the city-delivery rate of only 1 cent, instead of the 3 cents proposed.

This was primarily a section 3 case. The principal question litigated before the Commission was the relation of the ship-side and city-delivery rates. There was no complaint that either of those rates, standing alone, was too high or too low. As stated in the report (R. 65), "the reasonableness of the *level* of the rates is not in issue." The purpose of the order is to remove the discrimination.

As stated in *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624:

> Proceedings to remove unjust discrimination are aimed directly only at the *relation of rates*. (Court's italics.)

In *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 145 U. S. 263, at page 277, the Court said:

> * * * a charge may be perfectly reasonable under section 1 and yet may create an unjust discrimination or an unreasonable preference under sections 2 and 3.

And in the latter case the Court cited with approval the following from the English case of *Great Western Railway Co.* v. *Sutton*, L. R. 4 H. L. 226, 239:

> When it is sought to show that the charge is extortionate as being contrary to the statutable obligation to charge equally, it is immaterial whether the charge is reasonable or not; it is enough to show that the company carried for some other person or class of persons at a lower charge during the period throughout which the party complaining was charged more under the like circumstances.

The question is, then, may the Commission in a Section 3 case, in which the reasonableness of the level of the relative rates under Section 1 has not been investigated, prescribe the specific manner in which the rates shall be readjusted to remove the discrimination? We think that this authority is vested in the Commission under the enlarged jurisdiction conferred by Transportation Act, 1920, which among other things, amended Section 15 (1) of the Interstate Commerce Act so as to authorize the Commission to prescribe specific rates; and this power is not restricted to cases in which the Commission finds a rate to be unreasonable per se, in

violation of Section 1, but under the express provisions of the section the power may also be exercised where the Commission finds a rate to be unjustly discriminatory, in volation of section 2, or unduly preferential or prejudicial, in violation of section 3, or otherwise in violation of any provision of the Act.

The Commission has so interpreted the amended Act. In *Arkansas Shippers & Mfgrs. Asso.* v. *Director General,* 59 I. C. C. 662, 669, the Commission said:

> Prior to the amendments made in the transportation act, 1920, our orders requiring the removal of unjust discrimination or undue prejudice have usually afforded to carriers the choice of three alternative modes of compliance. They could reduce the higher rate to the level of the lower, increase the lower to the level of the higher, or place both upon some other common level. The interstate commerce act now in force empowers us to prescribe either the exact rate or the maximum or minimum, or maximum and minimum, to be charged in such case, and to make an order that the carriers shall not thereafter publish, demand, or collect any rate other than the rates prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be.

In the case at bar the record before the Commission fully warranted the prescription of the specific manner in which the rates should be revised in order to remove the undue prejudice. The question

as to what the specific rates should be in order to comply with the Commission's findings was assigned as one of the four questions to be taken up upon rehearing, and all parties to the proceeding, railroads and the uptown, interior, and water-front interests, all appeared and submitted evidence upon that issue. In passing it may be noted that no objection was registered by any party to the proposed action. As said by the court below (R. 141):

> We are further of the opinion that in view of the proceedings before the Commission, in which all parties participated under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, petitioners having participated in that hearing without objection or contest, and the carrier plaintiffs, having in fact invoked the Commission's aid upon the point, are in no position now to seek injunctive relief against the named rate, but should, if the rate is deemed not just and reasonable per se, pursue their remedy before the Commission in appropriate proceedings available to them for that purpose.

In *United States* v. *Ill. Cent. R. R.*, 263 U. S. 515, the Commission found the rate from Knoxo, Miss., a point on an independent branch line, to be unjustly discriminatory against a shipper there, in violation of section 3, because it was 2 cents per 100 pounds higher than the rate from Fernwood, Miss., the junction point between the branch line and the Illi-

nois Central, and from other points in the blanket territory. In its opinion at page 524 the Court said:

> But the mere fact that the Knoxo rate is inherently reasonable, and that the rate from competing points is not shown to be unreasonably low, does not establish that the discrimination is just. Both rates may lie within the zone of reasonableness and yet result in undue prejudice.

The Court also said, at page 521:

> The order leaves the carriers free to remove the discrimination either by making the Knoxo rate as low as that from Fernwood, or by raising the rate from Fernwood, or by giving both an intermediate rate.

Of particular significance is the holding that the Fernwood rate might be increased in order to remove the discrimination, *though that rate had not been shown to be unreasonably low.* As a matter of fact, there was no finding whatever by the Commission upon the reasonableness, either because too high or too low, of the Fernwood rate, as examination of the report of the Commission will show. *Swift Lumber Co.* v. *Fernwood & Gulf R. R. Co.*, 61 I. C. C. 485. Despite that absence of a finding upon the reasonableness of the Fernwood rate the Court said it could be increased to remove the discrimination.

The analogy between that case and the present case is clear. Here the Commission found that the

relation between the export rate and the domestic rate resulted in undue prejudice to certain cotton shippers and concentrators and undue preference of certain competitive cotton shippers and concentrators. That discrimination could be removed (1) by making the export rate as low as the domestic rate or (2) by raising the domestic rate to the level of the export rate or (3) by reducing the one and raising the other to a common level. The Commission, after exhaustive study of the situation and upon an exceptionally full record, concluded that the discrimination should be removed by adopting the third alternative, and to that end ordered that the export rate should be reduced, and the domestic rate should be increased to a common level. In order to do this, as plainly indicated by the *Illinois Central case,* it was not necessary for it to find that the export rate was unreasonably high *per se,* or that the domestic rate was unreasonably low *per se.* (Compare *United States* v. *Merchants Asso.,* 242 U. S. 178.)

Many of the rates involved in this proceeding had been prescribed in *Galveston Commercial Asso.* v. *Alabama & Vicksburg Ry. Co.,* 77 I. C. C. 388. In that case the Commission fixed domestic rates at a figure 5 cents lower than the export rates. In the case at bar it was found that by reason of the spread of 5 cents between the export and domestic rates undue preference and prejudice resulted, and,

as previously stated, the Commission reopened the *Galveston Commercial Asso. Case* and assigned it for further hearing in connection with these proceedings for the purpose of ascertaining what modification should be made in the order in that case to permit compliance with the first order herein. In prescribing the manner in which these rates should be readjusted in order to remove the discrimination the Commission did not go higher than the export rates nor lower than the domestic rates prescribed in the *Galveston Commercial Asso. Case,* but fixed a rate within the spread between those rates, no complaint having been made by any party to the proceedings that the level of the rates there prescribed was unreasonable.

The court below held that (R. 140)—

> a fair construction of the words "just and reasonable" as used in the context above quoted [Section 15 (1)] permits the conclusion that in a discrimination case under section 3 such as this is, it is only necessary that the rate fixed upon to remove the discrimination be found to be just and reasonable for that purpose, and that it is not necessary that it be found just and reasonable per se.

We submit that this holding is sound.

CONCLUSION

The decree of the court below dismissing the bill for want of equity should be affirmed.

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OCTOBER, 1929.

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No. 19

In the Supreme Court of the United States

OCTOBER TERM, 1929

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 19

ALEXANDER SPRUNT & SON, INC., ANDERSON, CLAYTON & CO., Houston Compress Company et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Arkansas Cotton Trade Association et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

This supplemental brief, submitted pursuant to leave of the Court, relates to a question which arose during the course of the oral argument herein October 31 and November 1, 1929, viz., whether, in view of the fact that the carriers against whom the order in question is directed did not appeal from the decree of the court below dismissing their bill

but acquiesced in the order by establishing the prescribed adjustment of rates, the appellants had the right to maintain this appeal.

In *Edward Hines Trustees* v. *United States,* 263 U. S. 143, suit was brought by a lumber concern to set aside as void an order of the Commission requiring carriers to cease and desist from collecting a certain penalty charge. The District Court sustained a motion of the United States to dismiss the bill on the ground that the plaintiffs had not shown such an interest in the subject matter as would entitle them to sue, and also for want of equity. The plaintiffs, who had not been parties to the proceedings before the Commission, contended that the order cancelling the penalty charge infringed their rights both as shippers and as prospective carriers.

This Court held that the mere fact that plaintiffs had not been parties to the proceedings in which the order was entered did not constitute a bar to the suit. "For it is brought to set aside an order alleged to be in excess of the Commission's power. *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42, 49; *Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557." "But," the Court said, page 148, "plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges canceled. They must show also that the order alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do. It is not alleged that the carriers wish to impose

such charges and, but for the prohibition contained in the order, would do so. For aught that appears carriers are well satisfied with the order entered. Cancellation of a charge by which plaintiffs' rivals in business have been relieved of the handicap theretofore imposed may conceivably have subjected plaintiffs to such losses as are incident to more effective competition. But plaintiffs have no absolute right to require carriers to impose penalty charges. Compare *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 111. Plaintiffs' right is limited to protection against unjust discrimination. For discrimination redress must be sought by proceedings before the Commission. Its findings already made, and the order entered, negative such claim in this connection." And, as the plaintiffs did not show any interest which entitled them to sue, the Court had "no occasion to consider either the power of carriers to impose the penalty charge or the power of the Commission to order its cancellation," and affirmed the decree of the lower court.

In *United States* v. *Merchants &c. Assn.*, 242 U. S. 178, shippers at Sacramento and other inland cities in California sought to enjoin a permissive order of the Commission granting carriers partial relief from the long-and-short haul clause of Section 4 of the Interstate Commerce Act, as a result of which the rates to Sacramento and the other inland cities were increased. Representatives of the inland

cities brought suit in the District Court to restrain the enforcement as to them of the Commission's order, and of the tariffs filed thereunder. The bill alleged, among other things, that these cities had for a number of years enjoyed the same rates as San Francisco and Oakland; that large industries and other businesses had been established there because they enjoyed terminal rates; that their commercial importance and prosperity would be ruined if the rates were withdrawn; that no changed conditions existed justifying a withdrawal of terminal rates; that they had not been parties to the proceedings in which the orders were made; and that the "orders authorizing the withdrawal of terminal rates" from them were, among other things, "discriminatory and unjust, were made without said cities having their day in court or without giving them an opportunity to show the unreasonableness thereof, that no justification for such increase was shown, and the order of April 30, 1915, was without evidence, that petitioners have been denied the equal protection of the law and deprived of property without due process of law, to their irreparable damage."

This Court held that the action was not maintainable; that the plaintiffs had mistaken their remedy; and that if the rates made by tariffs filed under the authority granted seemed to them unreasonable, or unjustly discriminatory, Sections 13 and 15 of the Interstate Commerce Act afforded ample remedy.

In many respects the case at bar is like the *Hines case.* It is not alleged here that the carriers wish to maintain the two-rate plan under which the export rate would be higher than the domestic and, but for the prohibition contained in the order, would do so. Inasmuch as the carriers have not appealed from the decree of the court below dismissing their bill, and have complied with the order by establishing the equalized rates required by the Commission's order, it must be assumed that they are satisfied with the order entered.

There is nothing to show that the carriers would restore the two-rate plan in the event the Commission's order were annulled. It may be noted, however, that if the order were annulled and the previous order in *Galveston Commercial Asso.* v. *A. & V. Ry. Co.,* 77 I. C. C. 388, were allowed to stand, the carriers would, by force of the order therein, be compelled to restore the two-rate plan from Oklahoma, Arkansas, and Louisiana to the Gulf ports but not from Texas. This is so because the latter order is still in force except in so far as modified by the order entered in the proceedings at bar. But annulment of the order here would not necessarily have the effect of requiring the continuance in force of the order in the *Galveston Commercial Association Case,* and apparently it would be within the power of the Commission to vacate that order, leaving the carriers free either to continue the present one-rate plan or to restore the former two-rate plan. But in the event the carriers filed tariffs

with the Commission proposing to restore the two-rate plan, such tariffs would be subject to suspension and investigation under the provisions of Section 15 (7) of the Interstate Commerce Act.

In other respects the facts in the case at bar are different from those in the *Hines case*. Here, the appellants are required to pay the increased rate prescribed by the Commission's order for the purpose of removing the discrimination.

Skinner & Eddy Corp. v. *United States*, 249 U. S. 557, seems to be more analogous than the *Hines case*. In that case the shippers attacked the validity of a fourth-section order of the Commission. The defendants, the United States, the Commission, and 16 railroads, contended that the District Court did not have jurisdiction of the subject matter of the suit because orders entered in a fourth-section proceeding can not be assailed in the courts, at least not until after a remedy has been sought under Sections 13 and 15 of the Act to Regulate Commerce. The Court, overruling this contention, said (p. 562):

> This contention proceeds apparently upon a misapprehension of plaintiff's position. If plaintiff had sought relief against a rate or practice alleged to be unjust because unreasonably high or discriminatory, the remedy must have been sought primarily by proceedings before the Commission, *Loomis* v. *Lehigh Valley R. R. Co.*, 240 U. S. 43, 50; *Texas & Pacific Ry. Co.* v. *American Tie &*

Timber Co., 234 U. S. 138, 146; *The Minnesota Rate Cases*, 230 U. S. 352, 419; *Robinson* v. *Baltimore & Ohio R. R. Co.*, 222 U. S. 506; *Baltimore & Ohio R. R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481; and the finding thereon would have been conclusive, unless there was lack of substantial evidence, some irregularity in the proceedings, or some error in the application of rules of law, *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 482; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361; *Los Angeles Switching Case*, 234 U. S. 294, 311; *Kansas City Southern Ry. Co.* v. *United States*, 231 U. S. 423, 440; *Proctor & Gamble Co.* v. *United States*, 225 U. S. 282, 297-298; *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541. But plaintiff does not contend that 75 cents is an unreasonably high rate or that it is discriminatory or that there was mere error in the action of the Commission. The contention is that the Commission has exceeded its statutory powers; and that, hence, the order is void. In such a case the courts have jurisdiction of suits to enjoin the enforcement of an order, even if the plaintiff has not attempted to secure redress in a proceeding before the Commission. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 49; *Louisiana & Pacific Ry Co.* v. *United States*, 209 Fed. Rep. 244, 251; *Atlantic Coast Line R. R. Co.* v. *Interstate Commerce Commission*, 194 Fed. Rep. 449, 451. *The Sacramento Case, supra*, was a case of this character. Compare *Interstate Commerce*

Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 92; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433. The District Court properly assumed jurisdiction of this suit.

This holding, it seems to us, points the way to a decision of the question here under consideration. If the real contention of the appellants is that the rates established as the result of the Commission's order are unjust because unreasonably high or discriminatory, they must seek redress by proceedings before the Commission. On the other hand, if their contention is that the Commission has exceeded its statutory powers and that hence the order is void, they appear to be entitled to maintain this action, provided they have shown that the order subjects them to legal injury.

In other cases it has been assumed, without discussion, that shippers may prosecute proceedings to determine the validity of orders of the Commission. *Western Chemical Co.* v. *United States*, 271 U. S. 268; *Nashville Ry.* v. *Tennessee*, 262 U. S. 318; *Assigned Car Cases*, 274 U. S. 564; *United States* v. *New River Co.*, 265 U. S. 533. Compare the opinion of the statutory District Court in *Anchor Coal Co.* v. *United States*, 25 F. (2d) 462, 478–479.

We contend that even if appellants do have the right to maintain this action, they are not entitled to any relief; because the order is not void for any of the reasons they urge, is within the statutory powers of the Commission, and is valid.

We submit that the holding in the *Sacramento Case, United States* v. *Merchants Assn., supra,* is applicable to the case at bar in so far as appellants' contention concerning the reasonableness *per se* of the equalized rates is concerned; that is, of the *level* of those rates. The Commission's order was one intended to remove discrimination. The level of the rates was not in issue. All parties to the proceedings, including appellants, understood this. Evidently appellants were satisfied with the level of the rates; for, although it was open to them at all times during the pendency of the proceedings to file a complaint with the Commission under Section 13 putting in issue the reasonableness of the level of the rates, they did not do so. That right is still open to them. That is their proper remedy if they now have any complaint because of the level of the equalized rates.

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SUPREME COURT OF THE UNITED STATES.

No. 19.—October Term, 1929.

Alexander Sprunt & Son, Inc., et al., Appellants, *vs.* The United States, et al.	Appeal from the District Court of the United States for the Southern District of Texas.

[April 14, 1930.]

Mr. Justice Brandeis delivered the opinion of the Court.

The Interstate Commerce Commission entered, on April 4, 1927, an order directed to the railroads operating in Oklahoma, Arkansas, Texas and Louisiana, which required them to remove, in a manner prescribed, undue prejudice and preference caused by their rates on cotton shipped from interior points to Houston and other ports on the Gulf of Mexico. *Application of Rates on Cotton to Gulf Ports*, 100 I. C. C. 159; 123 I. C. C. 685. Two suits, under the Act of June 18, 1910, c. 309, 36 Stat. 539, as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220, were promptly brought in the federal court for southern Texas, to enjoin the enforcement of the order and to set it aside. The first suit was brought by Alexander Sprunt & Son, Inc., and others interested in cotton compresses and warehouses located at wharves on the waterfront. The second, by the Texas & New Orleans Railroad Company and other rail carriers. The two cases were, with the consent of the parties, ordered consolidated as a single cause with a single record. The consolidated case was heard by three judges. An interlocutory injunction issued. Upon final hearing, the District Court sustained the validity of the order; dissolved the injunction; and entered a decree dismissing the bills. 23 F. (2d) 874.

None of the carriers appealed from the decree. Acquiescing in the decision of the District Court, and in the order of the Commission, the railroads promptly established the prescribed rate adjustment; and it is now in force. This appeal was taken by Alexander Sprunt & Son, Inc., and those shippers and associations of shippers which

had joined below as co-plaintiffs in the bill filed by it. No stay of the decree pending the appeal was granted or sought. And no railroad was made a party to the proceedings on the appeal. At the argument, this Court raised the preliminary question whether there is any substantive ground for appeal by the shippers alone. In order to answer that question, a fuller statement is necessary of the matter in controversy before the Commission and of the terms of the order entered by it.

From interior points in Texas, Louisiana, Oklahoma and Arkansas to the several ports on the Gulf of Mexico there were on all the railroads two schedules of rates on cotton—the domestic or city-delivery rates and the export or ship-side rates. The latter were, prior to the entry of the order complained of, 3 or 3.5 cents per 100 pounds higher than the former. All rates permit concentration and compression in transit and include free switching, to and from the warehouses and compresses.[1] Complaint was made that in applying these rates the railroads unjustly discriminated against other shippers and in favor of Alexander Sprunt & Son, Inc., and other owners of warehouses and compresses at the wharves, by applying the domestic rates on shipments to their plants of cotton intended for export or for transshipment by vessel coastwise. It was sought to justify this practice on the ground that the conditions which had led to charging the higher rate for export cotton were absent in the case of these water-front plants.

The difference of about 3.5 cents per 100 pounds between the domestic and the export rates is approximately equal to the cost of transporting the cotton, by dray or by switching, from up-town

[1]Cotton is usually ginned at country points and put in bales weighing 500 pounds with a density of 11 or 12 pounds per cubic foot. Before these bales can be dealt in on the cotton exchanges they must commonly go through two further processes. Concentration—for purposes of merchandising; that is, grading and assorting into lots of quality and quantity demanded by the ultimate purchasers. Compression—for purposes of transportation; that is, reducing the size of the bale by increasing its density, which, in order to secure favorable rail rates, must commonly be 22.5 pounds per cubic foot, and, in order to secure favorable vessel rates, must commonly be 32 pounds per cubic foot. The former is called standard density; the latter, high density. Some concentration and high density compression plants, are located at interior points. Many are located in the ports, at places remote from the water-front, or the wharves. These are called up-town plants. Since 1921, several plants have been located at the water-front, in close proximity to the vessels by which the cotton is shipped abroad or coastwise.

concentrating and high density compressing plants in the ports to ship-side. This difference served to equalize rates as between the up-town plants and the interior plants. *Louisiana Cotton*, 46 I. C. C. 451; *Galveston Commerical Asso.* v. *Alabama & Vicksburg Ry. Co.*, 77 I. C. C. 388. In 1921, and later, warehouses and high density compressing plants were located at the water-front, almost within reach of the ship's tackle. From these plants, there was no need of local transportation by dray or switching, to ship-side. The lower domestic rates were accordingly applied on cotton shipped to them, even though intended for export.

This practice gave to the water-front plants an obvious advantage over those located up-town in the ports and over those located in the interior. Widespread complaint of undue prejudice and preference led the Commission to institute upon its own motion, a general investigation concerning the lawfulness of the practices of the carriers in connection with the application of the city-delivery and ship-side rates, with a view to determining, among other things, "whether any change should be made in existing tariff regulations or rates in order to avoid or remove such undue preference, if any, that results or may result in favor of said water-front shippers or localities."[2] Practically all the railroads operating in the four southwestern states were made respondents to that proceeding.

After extended hearings, the Commission found that the existing adjustment of rates to ports was unduly prejudicial to the warehouses and compresses up-town and in the interior; that it was unduly preferential of those at the water-front; and that the rates should be readjusted so that one rate would apply for all deliveries within the usual switching limits of the respective ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage. The Commission did not, at first, specify the particular rate adjustment to be established to accomplish the result directed. Without inquiring into the reasonableness of the rates, it stated that the equality of treatment might be effected by any readjustment which would preserve, but not increase, the carriers' revenues. 100 I. C. C. 159, 167. But upon reopening the proceeding, pursuant to petitions therefor, the Commission prescribed specifically what the rate ad-

[2]With this general investigation, there was consolidated a formal complaint, Weatherford, Crump & Co. *v.* Abilene & Southern Ry. Co. et al., which had been filed earlier. 100 I. C. C. 159, note 1.

justment should be. It found that "for the purposes of this case, a fair and reasonable basis for equalizing the city-delivery and ship-side rates will be to increase the city-delivery rates 1 cent per 100 pounds and reduce the ship-side rates, exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city-delivery rates." 123 I. C. C. 685, 695.

First. The appellants contend that there is no basis for the Commission's finding of undue prejudice and preference. We are of opinion that appellants have no standing, in their own right, to make this attack. In so far as the order directs elimination of the rate differential previously existing, it worsened the economic position of the appellants. It deprived them of an advantage over other competitors of almost 3.5 cents per hundred pounds. The enjoyment of this advantage gave them a distinct interest in the proceeding before the Commission under § 3 of the Interstate Commerce Act. For, their competitive advantage was threatened. Having this interest, they were entitled to intervene in that administrative proceeding. And if they did so, they became entitled under § 212 of the Judicial Code to intervene, as of right, in any suit "wherein is involved the validity" of the order entered by the Commission.[1] But that interest alone did not give them the right to maintain an independent suit, to vacate and set aside the order. Such a suit can be brought by a shipper only where a right of his own is alleged to have been violated by the order. And his independent right to relief is no greater where by intervention or otherwise he has become a party to the proceeding before the Commission or to a suit brought by a carrier. In the case at bar, the appellants have no independent right which is violated by the order to cease and desist. They are entitled as shippers only to reasonable service at reasonable rates and without unjust discrimination. If such service and rates are accorded them, they cannot complain of the rate or practice enjoyed by their competitors or of the retraction of a competitive advantage to which they are not otherwise entitled. The advantage which the appellants enjoyed under the former tariff was merely an incident of, and hence was dependent upon, the right, if any, of the carriers to maintain that tariff in force and their continuing desire to do so.

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[1]Originally the Commerce Court Act, June 18, 1910, c. 309, 36 Stat. 539; U. S. C., Tit. 28, § 45a.

Why the carriers filed the new rate structure now in force is no concern of the appellants. If the carriers had done so wholly of their own motion, obviously these shippers would have had no ground of complaint, before any tribunal, unless the new rates were unreasonable or unjust. If they were believed by the appellants to be so, a complaint before the Commission would be the appropriate remedy. *Texas and Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *United States* v. *Merchants & Manufacturers Traffic Association*, 242 U. S. 178, 188; *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 295. The appellants' position is legally no different from what it would have been if the carriers had filed the rates freely, pursuant to an informal suggestion of the Commission or one of its members; or if the filing had been made by carriers voluntarily after complaint filed before the Commission, which had never reached a hearing, because the rate structure complained of was thus superseded.[4] The carriers who were respondents before the Commission filed the new rates, presumably because they now desire them. Nothing to the contrary is shown. So far as the carriers are concerned, it is as if the new rates had been filed wholly of their own accord and as if there had never been a controversy before the Commission. Since the appellants' economic advantage as shippers was an incident of the supposed right exercised by the carriers, the appellants cannot complain after the carriers are satisfied or prefer not to press their right, if any.

Appellants' present position resembles in all essentials one which was put forward in *Edward Hines Trustees* v. *United States*, 263 U. S. 143, 147, 148 and *United States* v. *Merchants & Manufacturers Traffic Association*, 242 U. S. 178, 188. There, as here, the plaintiffs were deprived by the order of the Commission of a competitive advantage. But the plaintiffs there, as here, were not subjected to or threatened with any legal wrong. And, since the carriers acquiesced in the order of the Commission, the plaintiffs could not maintain an independent action to annul the orders. Appellants' present position is unlike that of the plaintiffs in the cases relied upon. *United States* v. *Village of Hubbard*, 266 U. S.

[4]Compare Rules of Practice (Revised to December 2, 1919) IV(i); Manufacturers' & Jobbers' Union of Mankato v. Minneapolis & St. Louis Ry. Co., 1 I. C. C. 227; Lincoln Board of Trade v. Union Pacific Ry. Co., 2 I. C. C. 229; The Pennsylvania Co. v. Louisville, New Albany & Chicago Ry., 3 I. C. C. 223; American Wire Nail Co. v. Queen & Crescent Fast Freight Line, 3 I. C. C. 224; Alan Wood Iron & Steel Co. v. Pa. R. R. Co., 24 I. C. C. 27, 33.

474; *The Chicago Junction Case*, 264 U. S. 258; *Skinner & Eddy Corporation* v. *United States*, 249 U. S. 557; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42. In each of those cases, an independent legal right of the plaintiff was affected by the order which it was sought to set aside.[5]

Moreover, by the action of the carriers, the issue of undue prejudice and unjust preference, which had been passed upon by the Commission, has become moot. Compare *United States* v. *Anchor Coal Co.*, 279 U. S. 812. Most of the carriers never sought to annul the order. Those that joined in the suit to set it aside have since voluntarily severed themselves from the shippers who object to it. The fact that some carriers at one time protested is of no significance, among other reasons, because their protest may have been directed, not against that part of the order which commanded an equalization of rates, but against the particular figure at which equalization was ordered.[6] There is nothing to show that any carrier is now in sympathy with the appellants' attack on the order. A judgment in appellants' favor would be futile. It would not restore the appellants to the advantage previously enjoyed. If the Commission's order is set aside, the carriers would still be free to continue to equalize the rates; and for aught that appears would continue to do so.

Second. Appellants complain of the order also on the ground that it authorized an increase in the local or domestic delivery rates without a hearing and findings as to the reasonableness of the level of either the old or the new rates. It is urged that § 15 of the

[5]Two suits were involved in the *Diffenbaugh* case. One was against a carrier to recover allowances for substituted transportation facilities alleged to be due under § 15 of the Act. The Interstate Commerce Commission was joined and its order prohibiting the allowances sought to be enjoined because the order would otherwise have constituted a defense to the suit. In the other action, interested carriers intervened as parties plaintiff and persisted in their effort to set aside the order. In *Skinner & Eddy Corporation* v. *United States*, the right under the last paragraph of § 4 of the Act, not to pay increased rates except when due to reasons other than the elimination of water competition, was clearly the right of the shipper. In the *Chicago Junction Case*, the order violated the plaintiff's right under paragraph 2 of § 5 to equal treatment; and the plaintiff, with those similarly situated, was the only person in interest against the order. In the *Hubbard* case, the challenged order increasing rates was alleged to violate a contract between the plaintiff and the carrier, who, it was alleged, was not subject to the jurisdiction of the Commission.

[6]See 123 I. C. C. 685, 683; 23 F. (2d) 874, 876.

Act does not authorize the Commission to fix the rates necessary to remove undue prejudice without such hearing and findings. But plainly appellants cannot, in their own right, be heard to complain in this suit of this part of the order. The Commission's first order left the carriers free to choose the method for the removal of the preference. Compare *American Express Co.* v. *Caldwell*, 244 U. S. 617, 625: *United States* v. *Illinois Cent. R. R. Co.*, 263 U. S. 515, 521. If the carriers had, of their own accord, adopted the plan later prescribed by the Commission, appellants could, obviously, not be heard to complain of the reasonableness of the rate adopted, except in a proceeding before the Commission instituted under §§ 13 and 15 of the Act. For reasons which it is unnecessary to detail, the carriers were unable to agree upon a plan. They petitioned the Commission for help. In reopening the proceedings, the Commission notified the parties that one of the issues to be decided was "what rates shall be established to comply with [its] findings and order." The carriers have accepted the rate fixed by the Commission. In prescribing the rate, the Commission in no way prejudiced any preexisting rights or remedies of the appellants. Any question as to the reasonableness of the level of the rate was expressly left open by the Commission.[7] It did not prescribe any rate as the minimum. If appellants are aggrieved by the level of the new rates, they still have their remedy before the Commission under §§ 13 and 15 of the Act.

Third. The appellants urged a further objection. In order to avoid congestion in heavy traffic periods and undue detention of cars, shippers from uptown warehouses customarily deliver their cotton to shipside by dray or barge, in lieu of switching by the carriers; and they are paid allowances by the carriers for this substituted service. The Commission's first report stated: "This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching". 100 I. C. C. 159, 167. In its second report, the Commission reaffirmed this position. But in response to questions raised by the carriers, it stated that no allowances could lawfully be made with respect to what it termed the "intraplant" movement by hand truck, overhead trolley, etc., to ship-side from warehouses and compresses on and

[7]The Commission said, with reference to the rate, "the . . . finding is without prejudice to further inquiry into the reasonableness of the above rates in connection with other cases now pending." 123 I. C. C. 685, 695.

adjacent to the wharves operated as part of such warehouses or compresses.[6] Appellants urge that this prohibition is arbitrary and should be enjoined.

The question of these allowances was only incidentally raised in the proceedings before the Commission. It made no order with respect to them. The statements complained of appear only in the report and are not specifically referred to in the order. The Commission recognized the right of shippers to allowances for substituted transportation service furnished by them. It did not undertake to define what such services might be for all cases. Nor did it specifically refer to the services rendered by any of the appellants. Indeed, appellants insist that their warehouses or compresses are not operated as part of or in conjunction with the adjacent wharves or piers. If under their contracts with carriers, the appellants perform services which properly should be performed by the carriers, the appellants are free to demand allowances therefor and to enforce their demands by appropriate proceedings before the Commission and in the courts. In such proceedings, specific issues will be presented and decided.

The decree below dismissed the consolidated suit on the merits. As the matter insofar as it relates to the bill filed by these appellants has become moot since the decree was entered, the decree should be reversed, so far as it concerns appellants; and the District Court should be directed to dismiss their bill without costs. See *United States* v. *Anchor Coal Co.*, 279 U. S. 812. So far as concerns the carriers—no appeal having been taken by them—the decree entered below should stand.

Reversed with direction to dismiss.

The CHIEF Justice did not take part in this case.

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[6] "But upon cotton delivered to shipside from and by water-front warehouses or compresses over adjacent wharves or piers operated as a part of, or in conjunction with, such warehouses or compresses, a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water-front facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior of an uptown warehouse to the railroad car or dray is an intraplant movement. No allowance may lawfully be made for these intraplant movements." 123 I. C. C. 685, 697.